

UNION OF SOUTH AFRICA.

FINAL REPORT

OF THE

Commission for the Revision, Assimila-
tion and Consolidation of the Laws of
the various Provinces of the Union

RELATING TO

PATENTS, DESIGNS, TRADE MARKS, COPYRIGHTS
AND TACIT HYPOTHECATIONS.

Presented to both Houses of Parliament by Command of His Excellency
the Governor-General.

Price 1s. 6d.

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CHIEF JUSTICE'S CHAMBERS,

CAPE TOWN,

JANUARY, 1913.

His Excellency

The Governor General of the Union of South Africa,

Government House, Cape Town.

YOUR EXCELLENCY.

In continuation of their report of the 7th February, 1912, in regard to Copyright and Tacit Hypothecations, your Commissioners have now the honour to submit the result of their deliberations upon the remaining subjects submitted to them for consideration. They have embodied their recommendations in two draft bills, the first dealing with Patents and Designs, and the second with Trade Marks, copies of which, transmitted herewith, will speak for themselves, but with respect to which they desire some brief explanatory observations.

The question whether the official Patent and Trade Mark business of the Union should be centralized, or should be conducted separately in each Province is one to which your Commissioners have given careful attention. And a consideration of the matter, in the light of the evidence given, satisfies them that it is desirable to establish one central office, at which all applications for registration and protection could be dealt with by a skilled Commissioner, and where reference could be had to all necessary records, documents and plans. A system of separate Provincial administration would be more expensive and less satisfactory and would tend to produce conflicting decisions and divergent policies in the different Provinces. Provision is therefore made for the establishment of a Central Patent and Trade Mark office, to which the Governor General may by proclamation reserve the administration of all or any of the Provincial Acts. Until such a proclamation is issued, there will, under the scheme suggested, be no change; but after that has been done, no Patents or Trade Marks will be issued under the old Acts, save in pursuance of applications already pending; and from that date the machinery of the new statute will (subject to certain important and necessary exceptions) supersede that of the old, and the holders of existing Patents and Trade Marks are given the right (under definite conditions) to have them extended over the whole Union for the remaining period of this currency. At the same time, it is proposed that local convenience shall be consulted, as far as that is compatible with a single control. The Draft Acts therefore empower the Governor-General to establish a sub-office, in charge of a deputy officer, in each Province of the Union other than the one in which the main office is situated; and they provide for applications, notices and other documents connected with patents and trade marks being there lodged. Provision is also made for filing copies of such notices and documents at each sub-office in the Union, and for the examination of witnesses locally, in cases of opposition, should the Commissioner consider that such a course would be convenient. It does not seem desirable that any statutory directions should be given in regard to the disposal and arrangement of the records at present lodged in the various Provincial offices. These are matters for administrative decision. But your Commissioners desire to call attention to the necessity for indexing as completely and as speedily as possible the Patents and Trade Marks at present in existence throughout the Union. Until this has been done, both the public and the administration are much hampered in considering and dealing with new applications. And it is desirable that a copy of any general index which may be prepared should be open to public inspection at each Provincial sub-office. There is one other general question common to both Acts which calls for special reference. It will be noticed that no provision is made for conferring upon foreign applicants any preference in the event of the Union desiring to obtain the benefits of the International Convention for the Protection of Industrial Property. Your Commissioners have examined the provisions made in this behalf by the legislatures of Australia and New Zealand. But the terms of these provisions seem to your Commissioners open to some criticism, and it appears to them that further consideration and probably further consultation with the Imperial Government would be desirable before legislating in the matter. The circumstances of this country are not such as to render the question an urgent one, and it has therefore been left entirely open; though a provision based upon Section 23 of the Transvaal Proclamation (22 of 1902) has been adopted, to the effect that the grant of a foreign Patent shall be no bar to a local grant to the same person, if the application be timely made. Should it be deemed advisable however to legislate at once upon the

question of International protection, then your Commissioners would recommend that the lines of the New Zealand, rather than those of the Australian, statute should, with some modifications, be followed.

There are some points in each separate draft which require notice. Dealing first with the bill regulating Patents and Designs, it will be observed that the definition of a Patent is framed upon the lines of the one in force in the Transvaal, which has been found to work well in practice, it being specially provided however (Section 61) that the grant of a Patent in a foreign country shall not debar the grant of a Union Patent to the same person, if he applies in the ordinary way within 12 months thereafter. That is a provision which seems to your Commissioners equitable and just, and which has also been in practical working in the Transvaal for more than 10 years.

Perhaps the most important question of principle in connection with the Patents Bill has relation to the manner in which applications should be dealt with at the central office. Should a strict official examination as to novelty be instituted, as is done in Germany and America, and no letters be issued save in respect of applications which have stood the test of such an examination; or should the Patent Office refrain from any guarantee express or implied as to novelty, and a full opportunity of attack at a later stage be afforded to interested persons whose rights the grant would prejudice? The weight of expert opinion upon this point, considered as an abstract question, would seem to favour the examination system. On the other hand there are objections to it which merit consideration. The power of an official Examiner in regard to the restriction of claims and the refusal of Patents is difficult to control, and may be arbitrarily exercised. But it is not necessary to discuss the merits of the question, because your Commissioners are satisfied that it is not practicable in the present circumstances of the country to adopt such an examination system. To be of use, the investigation must be effective; an incomplete examination as to novelty would be worse than none at all, for it would induce a false sense of security not warranted in fact, and would result in the frequent rescission of grants which had received the imprimature of a State department. But an effective examination would necessitate not only a large staff of highly trained experts, but a mass of material in the way of indices, abstracts and scientific records and books which is at present practically unattainable. Your Commissioners recommend therefore that the office should not be compelled to undertake an examination as to novelty. The points on which the Commissioner is required to satisfy himself are detailed in Section 37; but he is not confined to these points and the fact that the statutory definition of an invention does not include an alleged invention obviates any danger that he may consider himself compelled to accept an application which relates to a device or a process clearly not patentable. It is obvious however that even under the procedure which is recommended the investigation work thrown upon the Commissioner may become very heavy, and that skilled assistance may be desirable. Provision has therefore been made for the appointment of one or more examiners to assist the Commissioner; such examiners are given a statutory status in regard to the investigations of applications. If any are appointed the Commissioner may avail himself of their services; if not, he performs the work himself.

The application, having been accepted, is in due course to be advertised, and it is at this stage that your Commissioners think that full opportunity should be given to interested persons to prevent the sealing of Letters Patent, if there are good reasons why they should not issue. They have accordingly made the grounds of objection as wide as possible, instead of limiting them as in England. This will enable any member of the public interested in the matter to crush a "non-novel" Patent by opposition proceedings before it is issued, instead of being compelled to wait until he could set up a defence to an infringement action, or institute proceedings for revocation. This procedure had answered well in the Transvaal, and in the opinion of your Commissioners it should be adopted throughout the Union. Attention may be usefully drawn in this connection to a small, though not unimportant, matter of detail. The Act provides that the Commissioner shall advertise the acceptance of an application in the prescribed manner. That assumes that an official Patent Journal will be started, when the central office is inaugurated. If that is not considered practicable, it may be necessary to revert to the expensive process of compelling the applicant to advertise the acceptance in successive numbers of the *Gazette*.

The question of the tribunal to deal with opposition proceedings is one of considerable importance, bearing directly as it does upon the qualifications and status of the Commissioner. In the opinion of your Commissioners it is desirable that the official at the head of the Patent Office should be a man of scientific training and, if possible, of legal experience. One thus qualified would be specially fitted to deal with oppositions to Patents and the Act as drafted confers upon him the

necessary jurisdiction in that regard. And in view of the fact that the duties thus imposed upon him will be judicial duties, and that he will be required to deal with the same questions as are raised in infringement actions, it is proposed that an appeal from his decision in opposition proceedings shall lie direct to the Appellate Division. This system prevailed in the Transvaal with excellent results from 1903 to 1907. In the latter year the services of Mr. Bucknill, a highly qualified and expert lawyer, were dispensed with, not because of any defect in the scheme of opposition procedure, but because after the office had been thoroughly organised, it was felt that there was not sufficient work to justify the retention of so highly paid an official. It is probable however that the Patent and Trade Mark work for the whole Union (especially as the Registration of Companies may in due time be added thereto) will fully warrant the appointment of an expert Commissioner. It is upon that assumption that the provisions bearing upon the point in question have been drafted. Should it be found impossible to procure a suitable man, or be deemed inadvisable on grounds of expense to engage his services, then your Commissioners recommend that the procedure devised in the Transvaal after Mr. Bucknill's departure be adopted. Under that system, the Commissioner, so soon as notice of opposition is received, refers the papers to the Registrar of the Provincial Division to be dealt with by a Judge sitting as a Divisional Court; from his decision an appeal lies to the Appellate Division. Should that machinery be decided upon, it will be necessary to substitute for Sections 54(3) and 72(5) of the draft bill clauses substantially identical with Sections 1 and 2 of the Transvaal Act 28 of 1907.

So far as practitioners are concerned, it is provided that all attorneys may practise as patent agents without special registration; but that no other persons shall in the future be entitled to do so save upon due registration after passing a prescribed examination; the vested rights of existing practitioners being however fully safeguarded. The question of the extent to which patent agents, not being attorneys, should be allowed to take part in contentious proceedings is one upon which divergent views have been expressed. It has been urged on behalf of such agents that being experts in a special subject they should be given the right of conducting all proceedings to their final issue, including the privilege of prosecuting appeals and instructing counsel. But your Commissioners are unable to take that view; they are prepared to recommend that such patent agents should be entitled to represent their clients in all proceedings before the Commissioner, including opposition proceedings; but they consider that so soon as recourse is had to a Court of Law, then the right to practise in that Court should be confined to duly qualified practitioners. They have provided accordingly (Section 89 (2)); but should it be decided that opposition proceedings are to be dealt with by a Judge, it will follow that, upon the principle above stated, the right of the ordinary patent agent to appear before the Commissioner should be expressly confined to non-contentious matters.

The Chapter dealing with Designs has been modelled upon the terms of the English statute (7 Ed. vii Chap. 29), and calls for no special remark.

The administrative provisions of the Trade Marks Bill have already been discussed, and there are not many questions of detail in connection with that measure which call for special reference. Following the lines of legislation in England, Australia and Natal, the Act provides that the registration of a Trade Mark shall be for a period of 14 years only, renewable, however, for similar periods thereafter upon payment of the prescribed fees. The life of existing Trade Marks registered under Provincial Acts, however, is not interfered with (Section 11).

Unregistered Trade Marks in use in any Province at the commencement of the new Act may, it is proposed, be registered, provided they would have been entitled to registration under the law of their Province, had application been made before such commencement. Every Provincial statute, save that of Natal, provides that Trade Marks in use before the taking effect of the earliest local legislation on the subject should have facilities for registration; so that ancient unregistered Trade Marks in every Province, save that of Natal, are fully protected. As to those in use in that Province alone, it is difficult to give them protection of which the local law advisedly deprived them.

This Act also has been drafted on the assumption that the Registrar of Trade Marks is to be a qualified expert. Authority is given him to deal with opposed applications subject to an appeal to the Appellate Division. Should another policy be decided on, it would be desirable, in the opinion of your Commissioners, that the same procedure should be adopted as in the case of Patents and that opposition proceedings should go before a Judge of the Supreme Court.

It has not been considered necessary to make any provision with regard to Workers' Marks or Commonwealth Marks on the lines adopted in Australia; but

a clause has been inserted (Section 20) allowing (with the permission of the Minister) a mark to be registered as a certificate by an association or public authority that the goods concerned are of a certain standard with regard to material, origin or conditions of manufacture, even though the authority certifying may have no interest as trader in the goods.

The prevention of counterfeit Trade Marks is a matter which hardly comes within the scope of your Commission's inquiry. The Cape, the Transvaal and Natal have each passed a Merchandise Marks Act framed upon the general lines of English legislation. But there is no similar measure upon the statute books of the Free State; and your Commissioners strongly recommend that steps be taken without delay to place that Province in the same position as the remainder of the Union in that respect. They have however framed a clause (Section 81) which will ensure that marks registered under the new Act shall enjoy the protection afforded by the Merchandise Marks legislation of the Provinces where such legislation exists.

We have the honour to be,

Your Excellency,

Your obedient servants,

DE VILLIERS.

J. ROSE-INNES.

W. P. SCHREINER.

References:

- C.—Commonwealth Act, No. 21 of 1903.
 E.—Patents and Designs Act (England), 1907, 7 Ed
 7 c. 29.
 T.—Transvaal Procl., No. 22 of 1902, amended by
 28, '07.
 O.F.S.—C. CXII., Law Book, 1901.

BILL

Relating to Patents for Inventions and the Registration of Designs.

BE IT ENACTED by the King's Most Excellent Majesty,
 the Senate and the House of Assembly of the Union of
 South Africa, as follows :—

CHAPTER I.

INTRODUCTORY.

1. This Act may be cited as the Patents and Designs Act, 1911.
2. The Act shall take effect on a day to be fixed by the Governor-General by Proclamation.
3. This Act is divided as follows :—

Chapter I., Introductory, sections 1-5.

Chapter II., Patents, sections 1-106.

- Part 1, Administration, sections 6-22.
- Part 2, The Register of Patents, sections 23-33.
- Part 3, Procedure, sections 34-76.
 - (a) Applications, sections 34-48.
 - (b) Opposition, sections 49-54.
 - (c) Patents and their Sealing, sections 55-65.
 - (d) Amendment of Specifications, sections 66-69.
 - (e) Extension of Patents, section 70.
 - (f) Patents of Addition, section 71.
 - (g) Restoration of Lapsed Patents, section 72.
 - (h) Revocation of Patents, sections 73-76.
- Part 4, Working of Patents and Compulsory Licences, sections 77-80.
- Part 5, Infringement of Patents, sections 81-85.
- Part 6, The Crown, sections 86-88.
- Part 7, Patent Agents, sections 89-90.
- Part 8, Regulation of Fees, sections 91-93.
- Part 9, Miscellaneous, sections 94-106.

Chapter III, Designs, sections 107-136.

- Part 1, Administration, sections 107-111.
- Part 2, Registration of Designs, sections 112-121.
- Part 3, Copyright in Registered Designs, sections 122-127.
- Part 4, Legal Proceedings, sections 128-130.
- Part 5, General, sections 131-136.

4. In this Act, except where clearly otherwise intended,— c., s. 4.

- “ Actual Inventor ” does not include a person importing E. 29, *see c. 9*
 an invention from abroad :
- “ Article ” means (as respects designs) any article of
 manufacture, and any substance artificial or natural,
 or partly artificial and partly natural ;
- “ Commissioner ” means the Commissioner of Patents and
 Designs appointed pursuant to this Act ;

[C. 542—(2)—'13.]

- E. 29, sec. 93. "Copyright" means the exclusive right to apply a design to any article in any class in which the design is registered;
- "Court" means a Provincial or Local Division of the Supreme Court of South Africa;
- E.c.29, sec. 93. "Design" means any design applicable to any article, whether for the pattern, for the shape or configuration, or for the ornament thereof, or for any two or more of such purposes, and by whatever means it is applicable, whether by printing, painting, embroidery, weaving, sewing, modelling, casting, embossing, engraving, staining, or any other means whatever, manual, mechanical, or chemical, separate or combined not being a design for sculpture;
- "Examiner" shall include any expert appointed by the Minister to whom a specification is referred under this Act;
- Transvaal
Proc. 22 02,
sec. 5. "Invention" means any new and useful art process machine manufacture or composition of matter, or any new and useful improvement thereof, capable of being used or applied in trade or industry, and not known or used by others in the Union, or in any foreign country (save as is provided by sections *fifty*, *fifty-one* and *fifty-two* respectively of this Act) and not patented or described in any printed publication in the Union or any foreign country before the application for a patent in respect of the same;
- "Law officer" means any Attorney-General or legal adviser of the Union Government appointed by the Minister to exercise the powers and discharge the duties conferred or imposed upon a Law Officer under this Act;
- C., sec. 4. "Patent" means letters patent for an invention granted in the Union;
- C., sec. 4. "Patent Office" means the Patent Office established under this Act;
- C., sec. 4. "Patented article" means an article in respect of which a patent has been granted;
- C., sec. 4. "Patentee" means the person for the time being entitled to the benefit of a patent;
- "Prescribed" means prescribed by this Act or by regulations made thereunder;
- E.c.29, sec. 93. "Proprietor of a new and original design"
- (a) where the author of the design duly executes the work for some other person, means the person for whom the design is so executed; and
 - (b) where any person acquires the design or the right to apply the design to any article, either exclusively of any other person or otherwise, means in the respect and to the extent in and to which the design or right has been so acquired, the person by whom the design or right is so acquired; and
 - (c) in any other case means the author of the design, and where the property in or the right to apply the design has devolved from the original proprietor upon any other person, includes that other person;
- Province" means any of the territories formerly Colonies and now Provinces constituting the Union of South Africa;
- Provincial Patent Act" means an act of any Province relating to patents in force at the date of Union, and includes all regulations thereunder;

“ Provincial Designs Act ” means any act of any Province relating to designs in force at the date of Union ; and includes all regulations thereunder ;

“ Regulations ” means regulations under this Act ;

“ This Act ” includes all rules and regulations made thereunder.

5. (1) Penalties printed below certain sections indicate that C., sec. 6. any contravention of the particular section, whether by act or omission, shall be an offence against this Act, punishable upon conviction by a penalty not exceeding the penalty mentioned. Imprisonment shall mean imprisonment with or without hard labour.

(2) Where a fine is mentioned with an alternative of imprisonment, the latter means imprisonment in default of payment of the fine.

(3) Where the last day fixed by this Act for doing anything thereunder falls on a day specified in the regulations as an excluded day, the regulations may provide for the thing being done on the next following day not being an excluded one.

CHAPTER II. PATENTS.

PART I.—ADMINISTRATION.

6. This Act shall not affect any proceedings under any C., sec. 6. Provincial Patent Act, nor any right or liability acquired or incurred before the commencement of this Act ; and any pending proceedings may, subject to the provisions relating to the transfer of Patent Administration from the Provinces to the Union, be continued and completed as if this Act had not been passed.

7. (1) The patentee under a Provincial Patents Act, whose C., sec. 7. patent is in force at the time, may make application under this & Reg. 28. Act for a patent for the invention. Save as otherwise prescribed all proceedings in connection with such an application shall be taken within the times and in the manner prescribed for ordinary applications, and shall be subject to the payment of any prescribed fees.

(2) The Commissioner may grant a patent under this Act for the invention ; but if he is satisfied that in any Province other than the one in which the patent under the Provincial Patents Act was granted the subject-matter of the patent under the Provincial Patents Act

- (a) is not novel, or
- (b) has been published, or
- (c) would not at the date of the application under this Act be patentable according to the provisions of the Patents Act of such Province, or
- (d) forms the subject of a pending application in such Province, then such Province may be excepted from the patent granted under this Act.

(3) Every patent granted under this section shall be for the unexpired period of the patent under the Provincial Patents Act.

(4) The patent under the Provincial Patents Act shall continue in force notwithstanding the grant of a patent under this Act, but may be surrendered by the patentee.

8. The Governor-General may by Proclamation declare that C., sec. 18. on a date therein specified the administration of the Patent Acts of any Province shall be transferred to the Patent Office established under this Act.

C., sec. 19.

9. On the date so specified

- (a) The Provincial Patent Acts of such Province, so far as they have any relation to patents, shall, subject to the provisions of this Act, cease to be administered in the Provincial Patent Office, and the Commissioner shall thereafter administer the same so far as is necessary for the purpose of completing then pending proceedings and giving effect to then existing rights; and he shall collect the fees due from time to time thereof;
- (b) All powers and functions vested under any Provincial Patent Act in the Governor thereof or in any Minister, officer or authority thereof shall vest in the Governor-General, or in the Minister, officer or authority exercising similar powers or functions under the Union as the case requires, or as is prescribed.

C., sec. 8.

10. After the administration of the Provincial Patents Acts of any Province has been transferred to the Patent Office no application for a patent under such Acts shall be receivable except pursuant to some right previously acquired. But nothing in this Act shall prevent any person who has obtained provisional protection in respect of an invention under a Provincial Patents Act from applying for a patent for that invention under the Provincial Patents Act.

C., sec. 6.
E., sec. 95 (2)

11. Except when otherwise provided this Act shall apply to all patents granted, either before or after its commencement, under any Provincial Patents Act, in substitution for the provisions which would have applied thereto if this Act had not been passed. Provided that the date of the expiration of such patent shall not be affected by this Act. And provided that no such patent shall be liable to revocation, save upon some ground on which it would have been liable to be revoked in terms of the law under which it was granted. And provided that all fees connected therewith shall continue to be payable, as if this Act had not been passed.

C., sec. 9.

12. The Minister to whom the Governor-General may assign that duty shall be charged with the administration of this Act.

C., sec. 10.

13. There shall be a Commissioner of Patents who shall be appointed by the Governor-General, and who shall under the Minister, have the chief control of the Department of Patents: and the Governor-General may appoint one or more Deputy-Commissioners and as many Examiners of Patents as may be necessary.

14. (1) The Commissioner, may, in relation to any particular matter or class of matters or to any particular Province or part of the Union, by writing under his hand delegate all or any of his powers under this Act (except this power of delegation) to a Deputy-Commissioner, so that the delegated powers may be exercised by him with respect to the matters or class of matters in the Province or part of the Union specified in the instrument of delegation.

(2) Every delegation under this section shall be revocable at will, and no delegation shall prevent the exercise of any power by the Commissioner.

T, 62

15. It shall be lawful for the Governor-General during the absence of the Commissioner from his office through illness, leave or other cause to appoint some fit and proper person to act for such Commissioner, and the person so acting shall have and exercise all the powers, duties and privileges conferred by this Act on the Commissioner.

16. For the purposes of this Act there shall be established an office which shall be called the Patent Office. The Governor-General may also establish a sub-office in every Province other than the one in which the Patent Office is situated; each sub-office shall be in charge of a Deputy Commissioner. C., sec. 12.

17. There shall be a seal of the Patent Office and impressions thereof shall be judicially noticed and admitted in evidence. C., sec. 13.

18. The Commissioner may for the purposes of this Chapter C., sec. 14.

- (a) Receive evidence and determine whether and how far it shall be given by affidavit or *viva voce* on oath; T., sec. 15 (2) & (3).
- (b) Summon witnesses, issue Commissions *de bene esse* and commit for contempt of Court;
- (c) Order discovery or inspection and require the due production of documents;
- (d) Award costs against any party to any proceedings before him.

19. Any costs awarded by the Commissioner shall be taxed by a taxing officer of the Court, and payment thereof may be enforced in the same manner as if they were costs allowed by a Judge of the Court. C., sec. 14 (a).
T., sec. 15 (5).

20. No person who has been summoned to appear as a witness before the Commissioner or any Deputy Commissioner shall without lawful excuse and after tender of reasonable expenses fail to appear in obedience to the summons. C., sec. 15.

Penalty, Fifty Pounds.

21. No person who appears before the Commissioner or any Deputy Commissioner as a witness shall without lawful excuse refuse to be sworn or to make an affirmation or to produce documents or answer questions which he is lawfully required to answer. C., sec. 16.

Penalty, Fifty Pounds.

22. No officer of the Patent Office performing work for the Commissioner shall buy, sell or acquire or traffic in any invention or patent, or in any right to or licence under a patent; and every purchase, sale or acquisition and every assignment or transfer of any invention or patent by or to any such officer shall be null and void; but this section shall not apply to the actual inventor or to any acquisition by bequest or devolution in law. C., sec. 17.

Penalty, One Hundred Pounds.

PART 2.—THE REGISTER OF PATENTS.

23. There shall be kept at the Patent Office a Register of Patents, wherein shall be entered— C., sec. 20.

- (a) The names and addresses of grantees of patents and of licensees thereunder;
- (b) Particulars of additions to or amendments, extensions or revocations of patents or licences, and notices of any assignments or transmissions thereof; and
- (c) Particulars of any other matters which are prescribed affecting the validity or proprietorship of patents or licences.

A copy of the Register of Patents shall be kept at such places as the Commissioner may direct.

24. Copies of all deeds, agreements, licences and other documents affecting the proprietorship in any letters patent, or in any licence thereunder must be supplied to the Commissioner in the prescribed manner, for filing in the Patent Office. E., 29, sec. 28
(1).
C., sec. 22.

C., sec. 23.
E., 71 (1). **25.** When any person becomes entitled to any registered patent or licence or any interest therein, the Commissioner shall on request, and on proof of title to his satisfaction register him as proprietor of the patent or licence, or of the said interest as the case may be.

C., sec. 24.
E., sec. 66. **26.** No notice of any trust shall be entered in the Register of Patents or be receivable by the Commissioner.

C., sec. 25.
E., sec. 71 (3). **27.** The person appearing from the patent register to be the proprietor of a patent or licence shall, subject to any rights appearing from such register to be vested in any other person, have power to deal with the patent or licence, as if he were the absolute owner thereof.

C., sec. 26. **28.** The last preceding section shall not protect any person dealing with the registered proprietor, other than as a *bona fide* purchaser for value, and without notice of any fraud on the part of the registered proprietor.

C., sec. 27. **29.** The Register of Patents kept at the Patents Office and at such other places as the Commissioner may direct shall, on payment of the prescribed fee, be open at all convenient times to the inspection of the public, subject to this Act.

C., sec. 28.
E., sec. 78. **30.** The Register of Patents kept at the Patents Office shall be *prima facie* evidence of all matters required or authorized by this Act to be inserted therein. And a certificate purporting to be under the hand of the Commissioner as to any entry, matter or thing which he is authorized by this Act to make or do shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

C., sec. 28.
E., sec. 80 (2). **31.** Certified copies, sealed with the seal of the Patent Office, of any entry in any such register, and of any deeds or documents in the Patent Office shall, subject to this Act, be supplied on payment of the prescribed fee, and shall be admitted in evidence in all Courts and proceedings without further proof or production of the originals.

C., sec. 117.
C., 30.
T., 36. **32.** (1) The Commissioner may, on request in writing accompanied by the prescribed fee, correct any clerical error in connection with an application for a patent or in any patent or any specification.

(2) The Court may, on the application of any person who complains of a wrong entry or wrong omission of an entry or of any other particulars in the Register of Patents, make such order for the striking out, insertion or amendment of such entry as it shall deem necessary.

(3) The Court may, in any proceedings under this section, decide any question that it may be necessary or expedient to decide in connection therewith.

(4) Due notice of any application under this section shall be given to the Commissioner.

33. No person shall wilfully make, or cause to be made—

C., sec. 31. (a) Any false entry in the Register of Patents;

E., sec. 89 (1). (b) Any document falsely purporting to be the copy of or extract from any entry in the Register of Patents, or of or from any deed or document in the Patent Office, or produce or tender in evidence any such document knowing it to be false.

Penalty, three years' imprisonment.

PART 3.—PROCEDURE

(a) Application.

34. (1) The following persons, whether British subjects or not, may make application for a patent:—

- (a) The actual inventor (or his agent or attorney) either alone or jointly with one or more other persons; or
- (b) the actual inventor (or his agent or attorney) jointly with the assignee of a part interest in the invention; or
- (c) the assignee of the actual inventor (or his agent or attorney) either alone or jointly with one or more other persons.

C. 32.
E. 1, 93.
T. 5, 6, 7, 50.
O.F.S. 12.

(2) If the actual inventor or his assignee or the assignee of a part interest in the patent is deceased, the application may be similarly made by or on behalf of the legal representative of such actual inventor, assignee, or assignee of a part interest in the invention.

35. (1) An application for a patent shall be for one invention only, and must be made in the form prescribed, and must be lodged by being left at or sent by post to the Patent Office or a Sub-office in the prescribed manner.

(2) The application must contain a declaration in the prescribed form setting out the facts relied on to support the application, and must be signed by the applicant and attested by a witness, and it must contain an address in the Union to which all notices, requisitions and communications of every kind may be made.

C. 33.
E. 1 (2).
T. 6, 7.
O.F.S. 3.

(3) An assignee, legal representative, agent or attorney making or joining in an application must furnish such proof of title or authority as the Commissioner may require or as may be prescribed.

(4) An application must be accompanied by a provisional or a complete specification.

(5) Subject to the provisions of this Act, the application shall date from the time when it is received at the Patent Office.

C. 33 (3).

(6) Every application and specification shall be accompanied by a prescribed number of copies, sufficient to enable a copy to be filed in each sub-office in the Union.

(7) If an application be lodged at any sub-office, the Deputy Commissioner shall give to the applicant or his agent a receipt therefor in the prescribed form. He shall retain in his office one copy of the application and specification, and shall transmit the original documents to the Patent Office together with the remaining copies. The Commissioner shall thereupon cause one copy of the said document to be sent to each of the other sub-offices, to be there filed.

(8) If an application be lodged at the Patent Office the Commissioner shall cause a copy of the application and specification to be transmitted to each sub-office, to be there filed.

36. (1) All specifications must commence with a title sufficiently indicating the subject-matter of the invention.

C. 34, 35, 36.
37, 38.
E. 2.
T. 7, 11.
O.F.S. 3, 4.

(2) A provisional specification must fairly describe the nature of the invention.

(3) A complete specification must fully describe and ascertain the invention and the manner in which it is to be performed, and must end with a distinct statement of the invention claimed.

(4) Drawings shall accompany every specification if and whenever required by the Commissioner, and these shall be deemed part of the specification, but if the drawings which accompany a provisional specification are sufficient for the purposes of the complete specification it shall suffice if the complete specification refers to them.

(5) Where the invention in respect of which an application is made is a chemical invention, such typical samples and specimens as may be prescribed shall, if in any particular case the Commissioner considers it desirable so to require, be furnished before the acceptance of the complete specification.

(6) If a complete specification does not accompany the application it may be lodged within nine months after the date of the application, or within such further time not exceeding altogether one month as the Commissioner in writing allows after payment of the prescribed fee.

(7) If a complete specification is not lodged the application shall lapse.

(8) The provisions of sub-sections 6, 7 and 8 of the last preceding section shall apply *mutatis mutandis* to all complete specifications lodged in continuation of provisional specifications.

T. sec. 8, 9.
C. sec. 39.

37. (1) Subject to the provisions of section *thirty-eight* hereof the Commissioner shall examine every application and specification to ascertain—

(a) Whether the title has been stated as prescribed.

(b) whether the invention has been described as prescribed.

(c) whether the application, specification and drawings have been prepared as prescribed.

(2) In the case of a complete specification lodged after a provisional specification the Commissioner shall also ascertain whether the invention fully described therein is substantially the same as the invention the notice of which is described in the provisional specification.

38. The Commissioner may, instead of himself undertaking the examination referred to in the preceding section refer the application and specification to an examiner to ascertain and report upon the particulars in the said section enumerated.

C. sec. 42.
E. sec. 3(2).

39. If in the case of an application accompanied only by a provisional specification, or of one accompanied by a complete specification in the first instance, the decision of the Commissioner is adverse to the application or specification on any matter referred to in section *thirty-seven*, or if (in case of reference made to an examiner) the examiner report adversely in respect of any such matter, the Commissioner may—

(a) refuse to accept the application; or

(b) require that the application, specification or drawing be amended before he proceeds with the application.

And in the latter case, the application shall, if the Commissioner so directs, bear date as from the time when the requirement is complied with.

C. sec. 43.

40. (1) An appeal shall lie to the Law Officer from any refusal or direction of the Commissioner under the preceding section.

E. sec. 3 (3).

(2) The Law Officer shall hear the applicant, and the Commissioner, and shall decide whether and subject to what conditions, if any, the application and specification shall be accepted.

41. If the decision of the Commissioner or the report of the examiner, as the case may be, is favourable to any application and specification referred to in section *thirty-nine* in all matters mentioned in section *thirty-seven*, or if all directions for amendments are complied with to the satisfaction of the Commissioner then the application and specification may be accepted

42. (1) If in an application accompanied by a provisional specification and followed by a complete specification the Commissioner decides or (in case of a reference to him) the examiner reports that the complete specification has not been prepared in the prescribed manner, or that the invention is not described as prescribed, the Commissioner may refuse to accept the complete specification until it has been amended to his satisfaction.

(2) If, in such an application, the Commissioner decides or the examiner reports that the invention particularly described in the complete specification is not substantially the same as that described in the provisional specification the Commissioner may

- (a) refuse to accept the complete specification until it has been amended to his satisfaction, or
- (b) (with the consent of the applicant) cancel the provisional specification, and direct that the application be treated as having been made on the date on which the complete specification was left, whereupon the application shall have effect as if made on that date.

(3) If, in such an application, the Commissioner decides or the examiner reports that the complete specification includes an invention not included in the provisional specification, the Commissioner may allow the original application to proceed so far as the invention included both in the provisional and in the complete specification is concerned, and treat the claim for the additional invention included in the complete specification as an application for that invention made on the date at which the complete specification was left.

(4) A refusal of the Commissioner to accept a complete specification shall be subject to appeal to the Law Officer, who shall hear the applicant and the Commissioner, and may make an order determining whether, and subject to what conditions, if any, the complete specification shall be accepted.

43. If in the case of any application and specification referred to in the last preceding section the decision of the Commissioner, or the report of the examiner, as the case may be, is favourable upon the points hereinbefore referred to then the Commissioner may, in the absence of any other lawful ground of objection accept such application and specification.

44. Unless a complete specification is accepted within twelve months from the date of application or such further time not exceeding [three months] as may, on payment of the prescribed fee, be allowed by the Commissioner then, save in the case of an appeal having been lodged against the refusal to accept, the application shall lapse.

45. (1) When an application and specification have been accepted the Commissioner shall give written notice thereof to the applicant.

(2) In addition when a complete specification has been accepted the Commissioner shall advertise the acceptance in the prescribed manner.

(3) If after an application for a patent has been made, but before the patent therein has been sealed, another application for a patent is made, accompanied by a specification having

the same or a similar title, the Commissioner may determine whether the invention comprised in both applications is the same, and if so, he may refuse to seal a patent in the application of the second applicant.

C. 50, 52.
E. 9, 69.
T. 10. (1) 20.

46. (1) On the acceptance of the complete specifications the application and drawings (if any) shall thereafter be open to public inspection.

(2) Where an application for a patent has lapsed or been refused the specifications connected therewith lodged in the Patent Office shall not at any time be open to public inspection or be published.

47. (1) After an application for a patent has been accepted, the invention may, during the period between the date of the application and date of sealing the patent, be used and published without prejudice to the validity of any patent to be granted on the application, and such protection is, in this Act, referred to as provisional protection.

C. 53, 54.
E. 4, 10.
T. 10 (3), 12
(2)
O.F.S. 5, 43.

(2) After the acceptance of a complete specification, and until the date of sealing a patent in respect thereof, or the expiration of the time for sealing, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of the acceptance of the complete specification: Provided that an applicant shall not be entitled to institute any proceedings for infringement unless and until a patent for the invention has been granted to him.

C. 51.
E. 68, 7 (6).

48. Reports of examiners shall in no case be published or be open to inspection, or be liable to be inspected or produced in any legal proceedings unless the Court or person having power to order inspection or production certifies that such inspection or production is desirable in the interests of justice and ought to be allowed; and investigations and reports required by this Act shall not in any way guarantee the validity of any patent nor attach any liability to the Commissioner or the Officer making them or any other person whatsoever.

(b) Opposition.

C. 56
E. 11.
T. 14.
O.F.S. 6, 29,
30.

49. (1) Any person may within two months from the advertisement of the acceptance of a complete specification (or within such further time, not exceeding one month, as the Commissioner, on application made within such two months, allows) give notice in the prescribed form at the Patent Office or any sub-office of opposition to the grant of the patent on any of the following grounds, but on no other:—

- (a) That the applicant has obtained the invention from the person giving such notice (hereinafter referred to as the opponent), or from a person of whom the opponent is the legal representative or assignee;
- (b) That the invention has been fraudulently obtained to the prejudice of another's rights.
- (c) That the invention has been patented within the Union on an application of prior date, or is the subject of a patent granted under a Provincial Act to some person other than the applicant or his predecessor in title.
- (d) That the complete specification describes or claims an invention other than that described in the provisional specification, and that such other invention forms the subject of an application made by the opponent in the interval between the leaving of the provisional specification and the leaving of the complete specification;
- (e) That the invention is not novel; or is not capable of being patented;

- (f) That the person represented as being the true and first inventor is not such;
- (g) That the invention or the application of the same is contrary to law, public order or good morals;
- (h) That the complete specification is confined to the statement or enunciation of principles, hypotheses, methods, systems, or discoveries, without stating the manner of applying or using the same;
- (i) That the complete specification does not sufficiently disclose or explain the invention or the manner in which it is to be performed;
- (j) That the title of the invention does not truly indicate the subject-matter of the invention.

(2) The notice shall specify the grounds relied on by the objector, shall state an address for service within the Union and shall be in the prescribed form.

(3) If the notice is given at a sub-office, it shall be accompanied by a copy; and the Deputy Commissioner shall retain the copy, and transmit the original to the Patent Office.

50. The exhibition of an invention at an international or industrial exhibition, or the publication of a description of the invention during the time of any such exhibition, or the use of the invention for the purposes of the exhibition at the place where it is held, or the use of the invention during the time of the exhibition at another place by someone not authorized thereto by the inventor, shall not prejudice the right of the inventor to apply for and obtain a patent for his invention, or the validity of any patent granted on the application: Provided that—

- (a) The exhibitor previous to exhibiting his invention informs the Commissioner in writing of his intention so to do, and
- (b) The application for a patent is made within six months from the opening of the exhibition.

51. A patent shall not be refused or held to be invalid by reason only of the invention in respect of which the patent was granted, or any part thereof, having been published prior to the date of the patent, if the patentee proves that the publication was made without his knowledge and consent, and that the matter published was derived or obtained from him, and, if he learnt of the publication before the date of his application for the patent, that he applied for and obtained protection for his invention with all reasonable diligence after learning of the publication.

52. A prior patent, or a prior application for a patent, or a prior description of an invention granted made or published more than fifty years before the making of an application for a patent, shall not bar the granting of the patent applied for or affect the validity of the patent when granted unless it is shewn that the invention specified or described in the prior patent application or description has been used in any Province of the Union within fifty years of the date of the acceptance of the application.

53. Where the complete specification contains two or more claims in respect of the invention, the invalidity of any one claim shall not affect the validity of any other claim or the validity of the patent, so far as it relates to any valid claim.

54. (1) The Commissioner shall give notice to the applicant of any objection duly lodged to his application, and the ground on which it is based and shall inform both the applicant and the objector of the place where and the time when he will consider the application and the objections thereto.

(2) At the said time and place the Commissioner shall hear the applicant either personally or by their attorneys or counsel, and their respective witnesses, if any: Provided that if it be made to appear to the Commissioner that the evidence of all or any of the witnesses may be more conveniently taken before the Deputy Commissioner of the sub-office where the objection was given, he shall take all steps necessary to cause such evidence to be so taken and to delegate to such Deputy Commissioner the necessary authority.

(3) Either party shall have the right to appeal from the decision of the Commissioner to the Appellate Division of the Supreme Court of South Africa, and such appeal shall be dealt with by the said Division in all respects as if it were an appeal from a single Judge of the Court.

(c) Patents and their Sealing.

C. 65, 66.
E. 12.
T. 16, 18.
O.F.S. 9, 11,
12.

55. (1) If there is no opposition, or, in case of opposition, if the final determination is in favour of the grant of a patent, a patent in the form set forth in the first Schedule hereto shall, on payment of the prescribed fee, be granted to the applicant, or in the case of a joint application to the applicants jointly, and the Commissioner shall cause the patent to be sealed with the seal of the Patent Office.

(2) A patent shall be sealed as soon as may be, and not after the expiration of fifteen months from the date of application, provided that:

(a) Where the Commissioner has allowed an extension of the time within which a complete specification may be left or accepted, a further extension of four months after the said fifteen months shall be allowed for the sealing of the patent;

(b) where the sealing is delayed by an appeal to the law officer or the Appellate Division, or by opposition to the grant of the patent, the patent may be sealed at such time as the Commissioner may direct;

(c) where the patent is granted to the legal representative of an applicant who has died before the expiration of the time which would otherwise be allowed for sealing the patent, the patent may be sealed at any time within twelve months after the date of his death;

(d) where in consequence of the neglect or failure of the applicant to pay any fee a patent cannot be sealed within the period allowed by this section, that period may, on payment of the prescribed fee and on compliance with the prescribed conditions, be extended to such an extent as may be prescribed, and this provision shall, in such cases as may be prescribed and subject to the prescribed conditions, apply where the period allowed for the sealing of the patent has expired before the commencement of this Act.

C. 69.
E. 13.
T. 19.

56. Subject to the provisions of this Act, every patent shall be dated and sealed as of the date of the application:

Provided that no proceedings shall be taken in respect of an infringement committed before the publication of the complete specification.

C. 65.
E. 14 (2).
T. 19.
O.F.S. 11.

57. A patent shall be granted for one invention only, but may contain more than one claim; and it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it comprises more than one invention.

C. 61.
E. 17, 29.
T. 21.
O.F.S. 13.

58. (1) The term limited in every patent for the duration thereof shall save as otherwise provided by this Act be fourteen years from its date.

(2) But every patent shall cease if the patentee fails to pay the prescribed fees within the prescribed times, provided that the Commissioner, upon the application of the patentee, shall, on receipt of such additional fee, not exceeding ten pounds, as may be prescribed, enlarge the time to such extent as may be applied for, but not exceeding three months.

(3) If any proceeding is taken, in respect of an infringement of the patent, committed after the failure to pay any fee within the prescribed time, and before any enlargement thereof, the Court may, if it thinks fit, refuse to award any damages in respect of such infringement.

59. A patent shall not be held to be invalid on the ground E. 42. that the complete specification claims a further or different invention from that contained in the provisional, if the invention therein claimed, so far as it is not contained in the provisional, was novel at the date when the complete specification was put in, and the applicant was the actual inventor thereof, or the agent, attorney, assignee or legal representative of the actual inventor.

60. (1) Where the same applicant has put in two or more C. sec. 63a. provisional specifications for inventions which are cognate, or modifications one of the other, and has obtained thereby concurrent provisional protection for the same and the Commissioner is of opinion that the whole of such inventions are such as to constitute a single invention, and may properly be included in the patent, he may accept one complete specification in respect of the whole of such applications, and grant a single patent thereon.

(2) Such patent shall bear the date of the earliest of such applications, but in considering the validity of the same, and for the purpose of the provisions of this Act, with respect to oppositions to the grant of patents the Commissioner shall have regard to the respective dates of the provisional specifications relating to the several matters claimed or included therein.

61. (1) A patent granted to the actual inventor, or his E. 15 (1). assignee, agent, or legal representative, shall not be invalid- T. 51 & 28. dated by an application in fraud of him, or by provisional protection obtained thereon, or by any use or publication of the invention subsequent to that fraudulent application during the period of provisional protection.

(2) The grant of a patent or similar exclusive privilege for an invention in a foreign country shall not be a bar to the grant of a patent for the same invention or any part thereof in the Union to the same person, provided that the application for the grant of a Union patent shall be made within twelve months of the date of the grant of such foreign patent or similar exclusive privilege.

(3) The publication in the Union or any foreign country, during the aforesaid period, of any description of the invention shall not invalidate the patent which may be granted for the invention in the Union.

By the term "foreign country" in these sub-sections is meant any country, colony or state outside the Union, and whether a British possession or not.

62. The effect of a patent shall be to grant to the patentee, C. 62. subject to the provisions of this Act and the conditions of the patent, full power, sole privilege and authority, by himself, E. 14 his agents, and licensees during the term of the patent to T. 5. make, use, exercise and vend the invention within the Union O.F.S. 1. in such manner as to him seems meet, so that he shall have and enjoy the whole profit and advantage accruing by reason of the invention during the term of the patent.

63. Every patent when sealed shall have effect throughout the Union, unless any Province be excepted therefrom, in which case it shall not apply to such excepted Province.

C. 21.
T. 52.
O.F.S. 44.

64. A patentee may in the prescribed manner transfer his patent to any other person, either wholly or in part, and he may similarly transfer it for any place in or for any part of the Union as effectually as if the patent had been granted only for such place in or such part of the Union. But no such transfer shall be lodged unless embodied in a notarial deed and duly registered at the office of the Commissioner.

C. 70.
E. 44.
T. 22.
O.F.S. 16.

65. If a patent is lost or destroyed or its non-production is accounted for to the satisfaction of the Commissioner he may at any time cause a duplicate thereof to be sealed and issued in such terms and subject to the payment of such fees as may be prescribed.

(d) Amendment of Specifications.

C. 71, 80.
E. 21.
T. 25.
O.F.S. 18.

66. (1) An applicant or a patentee may by request in writing left at the Patent Office seek leave to amend his specification, including drawings forming part thereof, by way of disclaimer, correction or explanation stating the nature of the amendment and the reasons for it. Where two or more persons are jointly entitled to the benefit of a patent the request shall be made by those persons or by some or one of them with the written consent of the others.

(2) The request and the nature of such proposed amendment shall be advertised in the prescribed form and manner, and at any time within three months from its first advertisement any person may give notice at the Patent Office of opposition to the amendment.

(3) Where such notice is given, the Commissioner shall give notice of the opposition to the person making the request and shall hear and decide the case, subject to an appeal to the law officer.

(4) The law officer shall, if required, hear the person making the request and the person so giving notice and being in the opinion of the law officer entitled to be heard in opposition to the request, and shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(5) When no notice of opposition is given, or the person so giving notice does not appear, the Commissioner shall determine whether and subject to what conditions, if any, the amendment ought to be allowed.

(6) When leave to amend is refused by the Commissioner the person making the request may appeal from the decision to the law officer.

(7) The law officer shall, if required, hear the person making the request and the Commissioner, and make an order determining whether and subject to what conditions, if any, the amendment ought to be allowed.

(8) No amendment shall be allowed that would make the specification as amended claim an invention substantially larger than or substantially different from the invention claimed by the specification as it stood before the amendment.

(9) Leave to amend shall be conclusive as to the right of the party to make the amendment allowed except in case of fraud; and the amendment shall in all Courts and for all purposes be deemed to form part of the specification.

(10) The foregoing provisions of this section do not apply when and so long as any action for infringement or proceeding for revocation of a patent is pending.

67. In any action for infringement of a patent and in a proceeding for revocation of a patent the Court may by order allow the patentee, subject to such terms as to costs and other wise as the Court may impose, to amend his specification by way of disclaimer, provided that no amendment shall be so allowed that would make the specification, as amended, claim an invention substantially larger than or substantially different from, the invention claimed by the specification as it stood before the amendment; and where an application for such an order is made to the Court notice of the application shall be given to the Commissioner, and the Commissioner shall have the right to appear and be heard.

C. 81.
E. 22.
T. 26.
O.F.S. 19

68. Where an amendment of a specification by way of disclaimer, correction or explanation has been allowed under this Act, no damages shall be given in any action in respect of the use of the invention before the disclaimer, correction, or explanation, unless the patentee establishes to the satisfaction of the Court that his original claim was framed in good faith and with reasonable skill and knowledge.

C. 82.
E. 23.
T. 27.
O.F.S. 20.

69. Every amendment of a specification shall be advertised in manner directed by the Commissioner.

C. 83.
T. 28.

(c) Extension of Patents.

70. (1) A patentee may, after advertising in manner directed by rule or order of the Court, his intention so to do, present a petition to the Court praying that his patent may be extended for a further term, but such petition must be presented at least six months before the time limited for the expiration of the patent.

C. sec. 84.
T. sec. 31.
E. sec. 18.

(2) Any person may give written notice to the Registrar of the Court objecting to the extension.

(3) The Court may hear the petition and the petitioner and any person who has given such notice of objection. The Commissioner shall also be entitled to appear and be heard.

(4) The Court shall in considering its decision have regard to the nature and merits of the invention in relation to the public and to the profits made by the patentee as such and to all the circumstances of the case.

(5) The Court, if it is of opinion that the patentee has been inadequately remunerated by his patent, may order the extension of the term of the patent or part of it for a further term not exceeding seven or in exceptional cases fourteen years, or order the grant of a new patent for the term therein mentioned, and containing any restrictions, conditions and provisions that the Court may think fit.

(f) Patents of Addition.

71. (1) Where a patent for an invention has been applied for or granted, and the applicant or the patentee, as the case may be, applies for a further patent in respect of any improvement in or modification of the invention, he may, if he thinks fit, in his application for the further patent, request that the term limited in that patent for the duration thereof be the same as that of the original patent or so much of that term as is unexpired.

C. 85.
E. 19.

(2) Where an application containing such a request is made, a patent (hereinafter referred to as a patent of addition) may be granted for such term as aforesaid.

(3) A patent of addition shall remain in force so long as the patent for the original invention remains in force, but no longer, and in respect of a patent of addition no fees shall be payable for renewal.

(4) The grant of a patent of addition shall be conclusive evidence that the invention is a proper subject for a patent of addition, and the validity of the patent shall not be questioned on the ground that the invention ought to have been the subject of an independent patent.

(g) Restoration of lapsed Patent.

F. sec. 20.
C. sec. 85a.

72. (1) Where any patent has become void owing to the failure of the patentee to pay any prescribed fee within the prescribed time, the patentee may apply to the Commissioner in the prescribed manner for an order for the restoration of the patent.

(2) Every such application shall contain a statement of the circumstances which have led to the omission of the payment of the prescribed fee.

(3) If it appears from the statement that the omission was unintentional, and that no undue delay has occurred in the making of the application, the Commissioner shall advertise the application in the prescribed manner, and within such time as may be prescribed, any person may give notice of opposition at the Patent Office.

(4) Where such notice is given the Commissioner shall inform the applicant thereof.

(5) After the expiration of the prescribed period the Commissioner shall hear the case, and (subject to an appeal to the Appellate Division in like manner as if he were a judge of the Court) issue an order either restoring the patent or dismissing the application. Provided that in every order made under this section, restoring a patent, such provisions as may be prescribed shall be inserted for the protection of persons who may have availed themselves of the subject matter of the patent after the patent had been duly announced and published as void.

(h) Revocation of Patent.

T. sec. 38.

73. (1) Revocation of a patent may be applied for by petition to the Court, upon any one or more of the grounds in which the grant of the patent might have been opposed, and also upon the ground that the prescribed payments have not been duly made.

T. sec. 39.
C. sec. 86 (4).
E. sec. 25 (3).

(2) Such a petition may be presented by the following persons, and no others—

- (a) The Minister of Justice or any person authorized by him;
- (b) Any person who alleges that the patent has been obtained in fraud of his rights or of the rights of any person under or through whom he claims;
- (c) Any person who alleges that he, or any person under or through whom he claims was the actual inventor of any invention included in the claim of the patentee;
- (d) Any person who alleges that he, his partner, or any person under or through whom he claims, had publicly manufactured, used or sold within the Union, before the date of the patent anything which the patentee claims as his invention.

T. sec. 40.
C. sec. 86.

74. (1) The petitioner must deliver with his petition particulars of the objections on which he means to rely, and if one of such objections is "want of novelty" he must state the time and place of the alleged previous publication or user, and if such publication is to be found in books, papers, or other document, copies or extracts of the same, stating the title, edition, place and date of publication or compilation thereof,

shall be annexed to the particulars. No evidence shall, except by leave of the Court, be admitted in proof of any objection of which particulars are not so delivered.

(2) Particulars delivered may be from time to time amended by leave of the Court or a Judge in Chambers.

(3) The defendant shall have the right to begin and give evidence in support of his patent, and if the petitioner produces evidence against the validity of the patent the defendant shall be allowed to bring rebutting evidence.

(4) The Court may, if it thinks fit, call in the aid of an assessor specially qualified to assist it in the hearing of the case; and any remuneration of such assessor fixed by the Court shall be included in the costs of the case and may be dealt with at the discretion of the Court as part of such costs.

75. Where a patent is revoked on the ground of fraud, or where a patent fraudulently obtained has been surrendered and revoked, the Commissioner may, on the application of the actual inventor, his assignee, agent, or legal representative, made in accordance with the provisions of this Act, grant to him a patent in lieu of and bearing the same date as the patent so revoked: C. sec. 86 (8).
E. 15.

Provided that no action shall be brought for any infringement of the patent so granted committed before the actual date when such patent was granted.

76. (1) A patentee may at any time, by giving notice in the prescribed manner to the Commissioner, offer to surrender his patent, and the Commissioner may, if after giving notice of the offer and hearing all parties who desire to be heard he thinks fit, accept the offer, and thereupon make an order for the revocation of the patent. C. sec. 86a.

(2) Where an action for infringement or a proceeding for the revocation of the patent is pending in any Court, the Commissioner shall not accept the offer for the surrender, or make an order for the revocation of the patent, except by leave of the Court, or by consent of the parties to the action or proceeding.

PART IV.

Working of Patents and Compulsory Licences.

77. (1) Any person interested may, after the expiration of two years from the granting of the patent, present a petition to the Commissioner alleging that the reasonable requirements of the public with respect to a patented invention have not been satisfied and praying for the grant of a compulsory licence or in the alternative for the revocation of the patent. C. sec. 87.
E. sec. 24.
T. sec. 29.

(2) The Commissioner shall consider the petition and if the parties do not come to an arrangement between themselves the Commissioner, if satisfied that a *prima facie* case has been made out, shall refer the petition to the Court, and, if the Commissioner is not so satisfied, he may dismiss the petition.

(3) Where any such petition is referred by the Commissioner to the Court, and it is proved to the satisfaction of the Court that the reasonable requirements of the public with reference to the patented invention have not been satisfied, the patentee may be ordered by rule or order to grant licences on such terms as the said Court thinks just or if the Court is of opinion that the reasonable requirements of the public will not be satisfied by the grant of licences the Court may order the revocation of the patent.

Provided that no order of revocation shall be made before the expiration of three years from the date of the patent or if the patentee gives satisfactory reasons for his default.

(4) On the hearing of any petition under this section the patentee and any person claiming an interest in the patent, as exclusive licensee or otherwise, shall be made parties to the proceedings, and the law officer shall be entitled to appear and be heard.

E. sec. 24 (5). **78.** For the purposes of the last preceding section, the reasonable requirements of the public shall not be deemed to have been satisfied—

- (a) If by reason of the default of the patentee to manufacture to an adequate extent, and supply on reasonable terms, the patented article, or any parts thereof which are necessary for its efficient working, or to carry on the patented process to an adequate extent, or to grant licences on reasonable terms, any existing trade or industry, or the establishment of any new trade or industry in the Union is unfairly prejudiced, or the demand for the patented article, or the article, or the article produced by the patented process is not reasonably met; or
- (b) If any trade, or industry in the Union is unfairly prejudiced by the conditions attached by the patentee, before or after the passing of this Act, to the purchase, hire, or use of the patented article, or to the using or working of the patented process.

79. An order of Court directing the grant of any licence under the aforesaid section shall, without prejudice to any other method of enforcement, operate as if it were embodied in a deed granting a licence, and made between the parties to the proceeding.

C. sec. 38.
E. sec. 87b.

80. (1) It shall not be lawful in any contract made after the passing of this Act in relation to the sale or lease of, or licence to use or work, any article or process protected by a patent to insert a condition the effect of which will be—

- (a) to prohibit or restrict the purchaser, lessee, or licensee from using any article or class of articles, whether patented or not, or any patented process, supplied or owned by any person other than the seller, lessor or licensor or his nominees; or
- (b) to require the purchaser, lessee, or licensee to acquire from the seller, lessor, or licensor, or his nominees, any article or class of articles not protected by the patent;

and any such condition shall be null and void, as being in restraint of trade and contrary to public policy.

Provided that this sub-section shall not apply if—

- (i) the seller, lessor, or licensor proves that at the time the contract was entered into the purchaser, lessee, or licensee had the option of purchasing the article or obtaining a lease or licence on reasonable terms, without such conditions as aforesaid; and
- (ii) the contract entitles the purchaser, lessee, or licensee to relieve himself of his liability to observe any such condition on giving the other party three months' notice in writing and on payment in compensation for such relief in the case of a purchase of such sum, or in the case of a lease or licence of such rent or royalty for the residue of the term of the contract as may be fixed by an arbitrator appointed by the Minister.

(2) Any contract relating to the lease of or licence to use or work any patented article or patented process, whether made before or after the passing of this Act, may at any time

after the patent or all the patents by which the article or process was protected at the time of the making of the contract has or have ceased to be in force, and notwithstanding anything in the same or in any other contract to the contrary, be determined by either party on giving three months' notice in writing to the other party; but where any such notice is given determining any contract made before the passing of this Act, the party giving the notice shall be liable to pay such compensation as, failing agreement, may be awarded by an arbitrator appointed by the Minister.

(3) Any contract made before the passing of this Act relating to the lease of or licence to use or work any patented article or process and containing any condition which, had the contract been made after the passing of this Act, would by virtue of this section have been null and void may, at any time before the contract is determinable under the last preceding sub-section, and notwithstanding anything in the same or any other contract to the contrary, be determined by either party on giving three months' notice in writing to the other party; but where any such notice is given the party giving the notice shall be liable to pay such compensation as, failing agreement, may be awarded by an arbitrator appointed by the Minister.

(4) The insertion by the patentee in a contract, made after the passing of this Act, of any condition which by virtue of this section is null and void shall be available as a defence to an action for infringement of the patent, to which the contract relates, brought while that contract is in force.

(5) Nothing in this section shall -

- (a) Affect any condition in a contract whereby a person is prohibited from selling any goods other than those of a particular person; or
- (b) Be construed as validating any contract which would, apart from this section, be invalid; or
- (c) Affect any right of determining a contract or condition in a contract exercisable independently of this section; or
- (d) Affect any condition in a contract for the lease of or licence to use a patented article, whereby the lessor or licensor reserves to himself or his nominees the right to supply such new parts of the patented article as may be required to put or keep it in repair.

PART V.

Infringement of Patents.

81. (1) A patentee shall not be entitled to recover any damages in respect of any infringement of a patent granted after the commencement of this Act from any defendant who proves that at the date of the infringement he was not aware, nor had reasonable means of making himself aware, of the existence of the patent, and the marking of an article with the word "patent," "patented," or any word or words expressing or implying that a patent has been obtained for the article, stamped, engraved, impressed on, or otherwise applied to the article, shall not be deemed to constitute notice of the existence of the patent unless the word or words are accompanied by the year and number of the patent:

E. 26, 25, 32,
33, 34, 35.
T. 43, 47.
O.E.S. 36, 40,
C. 88, 91.

Provided that nothing in this section shall affect any proceedings for an interdict.

(2) In an action for infringement of a patent the following provisions shall apply:-

- (a) Any ground upon which a patent may be revoked under this Act shall be available by way of defence,

E. 25 (2).

- E. 32. (b) The defendant, if entitled to present a petition to the Court for the revocation of the patent, may, without presenting such a petition, apply in accordance with the rules of the Court by way of counterclaim in the action for the revocation of the patent.
- C. 88 (2) (c) The plaintiff must deliver with his declaration or by order of the Court or a Judge at any subsequent time particulars of the infringement complained of.
- C. 88 (3) (d) The defendant must deliver with his statement of defence or by order of the Court or a Judge at any subsequent time particulars of any objections on which he relies in support thereof.
- C. 88 (4) (e) If the defendant disputes the validity of the patent the particulars delivered by him must state the grounds on which he disputes it, and if one of those grounds is want of novelty must state the time and place of the previous publications or user alleged by him, with the particulars required in section *seventy-four* (1) hereof.
- C. 88 (5) (f) At the hearing no evidence shall, except by leave of the Court or a Judge, be admitted in proof of any alleged infringement or objection of which particulars have not been so delivered.
- C. 88 (6) (g) Particulars delivered may from time to time be amended by leave of the Court or a Judge.

82. In any action for infringement of a patent the Court may, if it thinks fit, call in the aid of an assessor specially qualified to assist it in the hearing of the case, upon the terms as to remuneration already laid down in section *seventy-four* (4) hereof.

- C. 90. **83.** In any action for infringement (1) The Court may, if it is of opinion that any claim in the complete specification is invalid, order the plaintiff to pay the defendant the whole or such part of the costs of the action as it thinks just, notwithstanding that the patent is held to be valid so far as it relates to any other claim, and order the patentee to file a disclaimer at the patent office of the invalid claim.

- E. 35. (2) The Court may certify that the validity of the patent came in question; and if the Court so certifies then in any subsequent action for infringement the plaintiff in that action on obtaining a final order or judgment in his favour shall have his full costs, charges, and expenses as between attorney and client, unless the Court trying the action certifies that he ought not to have the same.

- E. 34. (3) The Court may on the application of either party make such order for an injunction, inspection or account, and impose such terms and give such directions respecting the same and the proceedings thereon as the Court may see fit.

- C. *see 89* **84.** In any action for infringement the validity of a patent shall not be disputed on the ground of want of novelty by reason that a patent for the same invention was applied for, or granted, more than fifty years prior to the application for the first mentioned patent, if the invention has not been in public use in the Union or in any Province at any time during such period of fifty years.

- C. *see 91A* **85.** Where any person claiming to be the patentee of an invention, by circulars, advertisements or otherwise, threatens any other person with any legal proceedings or liability in respect of any alleged infringement of the patent, any person aggrieved thereby may bring an action against him, and may obtain an interdict against the continuance of such threat.

and may recover such damages (if any), as he has sustained thereby, if the alleged infringement, to which the threats related, was not in fact an infringement of any legal rights of the person making such threats.

Provided that this section shall not apply if the person making such threats, with due diligence, commences and prosecutes an action for infringement of his patent.

PART VI.

The Crown.

86. (1) A patent shall to all intents have the like effect against the King as it has against a subject. C. 92.
E. 29.
T. 57.

(2) But a Minister may use the invention for the public service on such terms as are agreed upon with the patentee or in default of agreement on such terms as are settled by arbitration.

87. (1) The Governor-General if thereto authorized by resolution of both Houses of Parliament may direct that any patent shall be acquired by the Minister from the patentee. C. 93.

(2) The Governor-General may thereupon by notification published in the *Gazette* declare that the patent has been acquired by the Minister, and upon such notification the patent and all rights of the patentee thereunder shall by force of this Act be transferred to and vested in the Minister in trust for the Union Government.

(3) The Government shall pay to the patentee such reasonable compensation as is agreed upon or as is, in default of agreement, settled by arbitration.

88. (1) The inventor of any invention or improvements in instruments or munitions of war may assign the invention and the patent obtained or to be obtained for the invention to the Union Government. C. 95—121.
E. 30.
T. 58.

(2) The assignment and all covenants and agreements therein contained shall be valid and effectual and may be enforced by action or other appropriate proceeding in the name of the Minister.

(3) Where any invention has been assigned to the Government the Minister for Defence may, by notice in writing to the Commissioner, direct that the invention and the manner in which it is to be worked shall be kept secret.

(4) Every application, specification, amendment of specification or drawing received at the patent office or by the Commissioner relating to any invention in respect of which such notice has been given shall be sealed up by the Commissioner, and the contents of such application, specification, drawing or document shall not be divulged without the written permission of the Minister for Defence.

(5) Letters patent for the invention may be made out in the name of the inventor and sealed, but such letters patent shall be delivered to the Minister for Defence and not to the inventor and shall be the property of the Government, and no proceeding shall lie for the revocation of the patent.

(6) The communication of any invention to the Minister for Defence or to any person authorized by him to investigate the invention shall not, nor shall anything done for the purpose of the investigation by such person, be deemed publication or use of the invention so as to prejudice the grant or validity of any patent for the invention.

(7) The Minister for Defence may by notice in writing to the Commissioner direct that any invention directed to be kept secret need no longer be kept secret, and thereupon the specification and drawings may be published.

PART VII.

Patent Agents.

- E. 84, 85,
T. 59,
C. 101. **89.** (1) Any person on passing the prescribed examination and on paying to the Commissioner a fee of five pounds may be registered by him as a patent agent.
- C. 102. (2) A patent agent may sign and make all communication between an applicant and the Commissioner (other than an application for a patent) and may represent an applicant on all attendances before the Commissioner including attendances connected with opposition proceedings, and shall have such other privileges as may be prescribed.
- C. 103. (3) The name of any person registered as a patent agent may be removed from the register in the prescribed manner and on the prescribed grounds.
- C. 104. (4) No person who has been employed as an officer in the patent office shall be registered as a patent agent until he has ceased to be an officer for at least twelve months.
- C. 105. (5) Any person who proves to the satisfaction of the Commissioner that he was at the commencement of this Act *bona fide* practising as a patent agent in any part of the Union, and had been so practising for six months prior to such commencement, and any person who has been an officer in a patent office of any Province on complying with the prescribed conditions may be registered as a patent agent without passing the prescribed examination.
- C. 106. (6) Every person entitled to practise as an attorney within the Union may practise as a patent agent without passing the prescribed examination and without being registered as a patent agent.
- C. 107.
T. 59 (3). **90.** No person shall practise or act or describe himself as a patent agent unless he is registered or entitled to practise as a patent agent under this Act.

Penalty: One hundred pounds.

PART VIII.

Regulations and Fees.

- C. Sec. 108. **91.** The Governor-General may make regulations, not inconsistent with this Act, prescribing all matters which by this chapter are required or permitted to be prescribed, or which are necessary or convenient to be prescribed, for giving effect to this chapter, or for the conduct of any business relating to the Patent Office.
- C. Sec. 109. **92.** (1) All regulations so made shall
 - (a) be published in the *Gazette*;
 - (b) take effect from the date of publication, or from a later date to be specified in the regulations; and
 - (c) be laid before both Houses of Parliament as soon as practicable after they are made.
 (2) If either House of Parliament resolves within thirty days after any regulation has been laid before it that the regulation should be disallowed, then such regulation shall thereupon become of no effect, without prejudice to the validity of anything done in the meantime under the regulations, or to the making of any new ones.
- C. sec. 110. **93.** (1) There shall be paid to the Commissioner, in respect of the several matters specified in the second Schedule the fees therein mentioned; and there shall be paid to him, in respect of other matters under this Act, or the regulations, such fees as are prescribed.

(2) The Governor General may by regulation, and subject to this Act, alter the form in the Schedules, and reduce the fees specified in the second Schedule.

PART IX.

Miscellaneous.

94. (1) The rights granted to a patentee by a patent are C. sec. 110A.
capable of assignment, and of devolution by operation of law.

(2) Where, under this Act, a patent is granted to two or more persons jointly, each of such persons shall (subject to any contract to the contrary) be entitled to use the invention for his own profit without accounting to the others, but shall not be entitled to grant a licence without their consent; and if any such person dies, his beneficial interest in the patent shall devolve on his personal representatives as part of his estate.

95. If any person is, by reason of infancy, lunacy or other disability, incapable of making any declaration or doing any- E. 83.
thing required or permitted by or under this Chapter, the T. 55.
guardian or curator (if any) of the person subject to the O.F.S. 47.
disability, or, if there be none, any person appointed by any C. 120
Court possessing jurisdiction in respect of his property, may make such declaration or a declaration as nearly corresponding thereto as circumstances permit, and do such things in the name and on behalf of the person subject to the disability. An appointment may be made by the Court for the purposes of this section, upon the petition of any person acting on behalf of the person subject to the disability, or of any other person interested in the making of the declaration or the doing of the thing.

96. The Commissioner may refuse to grant a patent for an C. sec. 118.
invention of which the use would in his opinion be contrary to law, morality or public order.

97. Where any discretionary power is by or under this Chapter given to the Commissioner, he shall not exercise that E. 73.
power adversely to the applicant for a patent or for amend- T. 56.
ment of a specification, without (if so required within the C. 119.
prescribed time) giving the applicant an opportunity of being heard.

98. Subject to any rules prescribed in any proceeding under E. 77.
this Chapter before the law office, the evidence shall be given by affidavit in the absence of directions to the contrary; but in any case in which he thinks it right so to do, he may take evidence *viva voce* in lieu of or in addition to evidence by affidavit or allow any declarant to be cross-examined on his declaration. He may order costs to be paid by either party; and such order may on the application of either party be made an order of the Court.

99. The Commissioner may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Chapter, apply to the Law Officer for directions on any point not liable to be brought before him on appeal.

100. (1) A patent shall not prevent the use, within the C. 123.
territorial waters of the Union, of an invention for the pur- E. 48.
poses of the navigation or working of a British vessel registered at a port or place outside the Union or of a foreign vessel, or the use of an invention in any such vessel within those waters, provided it is not used therein for or in connection with the manufacture or preparation of anything intended to be sold in or exported from the Union.

(2) This section shall not extend to vessels of any British possession or foreign State of which the laws do not confer corresponding rights with respect to the use of inventions in British vessels while in the ports of that State or in the waters within the jurisdiction of its Courts.

E. 89 (24),
T. 42,
O.F.S. 31, 35. **101.** (1) No person shall falsely represent that any article sold by him is a patented article.

Penalty: One Hundred Pounds or Three Months' Imprisonment.

(2) If any person sells an article having stamped, engraved, or impressed thereon or otherwise applied thereto the word "patent," "patented," or any other word expressing or implying that the article is patented, he shall be deemed for the purposes of this section to represent that the article is a patented article.

E. 89 (5) **102.** No person shall use on his place of business, or on any document issued by him, or otherwise, the words "Patent Office," or any other words suggesting that his place of business is officially connected with, or is, the patent office.

Penalty: Twenty pounds.

E. 90. **103.** The grant of a patent under this Act shall not be deemed to authorize the patentee to use the Royal Arms, or to place the Royal Arms, on any patented article; and no person, without the authority of the King or some member of the Royal Family or of the Governor-General, shall use in connection with any business, trade, calling or profession the Royal Arms (or arms so nearly resembling them as to be calculated to deceive) in such manner as to be calculated to lead to the belief that he is duly authorized to use the Royal Arms.

Penalty: Twenty pounds.

C. sec. 112. **104.** No person shall wilfully make any false statement or false representation to deceive the Commissioner or any officer in the execution of this Chapter, or to procure or influence the doing or omission of anything in relation to it or any matter thereunder.

Penalty: One year's imprisonment.

C. sec. 117.
T. sec. 37. **105.** The Commissioner may, on request in writing accompanied by the prescribed fee, correct any clerical error in the Register of Patents, or in any proceedings under this Chapter; but no fee shall be required in respect of any correction necessitated solely by error in the Patent Office.

C. sec. 125. **106.** It shall be the duty of all patentees and their assigns and legal representatives, and of all persons making or vending any patented article for or under them, to give sufficient notice to the public that the same is patented, either by fixing thereon the word "patented," together with the day and year the patent was granted and the number of the patent; or when from the character of the article this cannot be done, by fixing to it, or to the package wherein one or more of them is enclosed, a label containing the like notice; and in any suit for infringement by the party failing so to mark, no damages shall be recovered by the plaintiff, except on proof that the defendant was duly notified of the infringement and continued after such notice to make use or vend the patented article.

CHAPTER III — DESIGNS

PART I. — Administration

107. This Act shall not affect any proceedings under any Provisional Designs Act nor (except where otherwise expressly provided) any right or liability acquired or incurred before the commencement of this Act; and any pending proceedings may be continued and completed, as if this Act had not been passed.

108. (1) The registered proprietor of a design under a Provincial Designs Act, where copyright is in force at the time may apply for registration under this Act. Save as otherwise prescribed the procedure in such a case shall be the same as that followed in ordinary applications and shall be subject to the payment of any prescribed fees.

(2) The Commissioner may register such design under this Act; but if he is satisfied that the design

(a) is not new or original, or

(b) has been published, or

(c) forms the subject of a pending application for registration in any Province other than the one in which it is registered under the Provincial Designs Act

then any such Province may be excepted by entry duly made in the register from the effect of the registration under this Act.

(3) The copyright secured by registration under this section shall not extend beyond the unexpired period of the copyright under the Provincial Designs Act.

109. The Governor-General may by Proclamation declare that, on a date therein specified the administration of the Designs Acts of any Province shall be transferred to the Patent Office established under this Act.

110. After the said date no application for registration under such Act shall be receivable except pursuant to some right previously acquired; and all the provisions of sections *nine* and *thirteen* of this Act with regard to the administration of Provincial Patent Acts, to the transference of powers and functions thereunder, and to the substitution of the provisions of this Act for those of such Acts shall apply *mutatis mutandis* to the administration and the provisions of the Provincial Designs Acts concerned and to the transference of powers and functions thereunder.

111. The Commissioner of Patents shall also be the Commissioner of Designs, and he shall under the Minister have control, in accordance with this Act, of all matters connected with the registration of designs. And the provisions of sections *fourteen* and *fifteen* hereof shall be as operative in respect of any powers, duties or privileges of the Commissioner relating to designs, as in respect of those relating to patents.

PART II.—*Registration of Designs.*

112. (1) The Commissioner may, on the application (made E. 49 (1) in the prescribed form and manner) of any person claiming to be the proprietor of any new or original design not previously published in the Union, register the design under this Chapter of the Act.

(2) The same design may be registered in more than one E. 49 (2) class; and in case of doubt as to the class in which a design ought to be registered, the Commissioner may decide the question.

(3) The exhibition at an industrial or international exhibition, certified as such by the Minister, or the exhibition elsewhere during the period of the holding of the exhibition, without the privity or consent of the proprietor, of a design, or of any article to which a design is applied, or the publication, during the holding of any such exhibition, of a description of a design shall not prevent the design from being registered, or invalidate the registration thereof: Provided that—

- (a) the exhibitor, before exhibiting the design or article or publishing a description of the design, gives the Commissioner the prescribed notice of his intention to do so; and
- (b) the application for registration is made before or within six months from the date of the opening of the exhibition.

E. sec. 49 (3). (4) The Commissioner may if he thinks fit refuse to register any design presented to him for registration; but any person aggrieved by such refusal may appeal therefrom to the Court, giving due notice to the Commissioner. And the Court may make an order determining whether, and subject to what conditions if any, registration is to be permitted.

E. sec. 75. (5) The Commissioner shall refuse to register a design of which the use would in his opinion be contrary to law or morality: there shall be a right of appeal from such refusal similar to that given by the last sub-section.

E. sec. 49 (4). (6) An application which, owing to any default or neglect on the part of the applicant, has not been completed so as to enable registration to be effected within the prescribed time shall be deemed to be abandoned.

E. sec. 49 (5). (7) A design when registered shall be registered as from the date of the application for registration.

E. sec. 50. **113.** Where a design has been registered in one or more classes of goods, the application of the proprietor of the design to register it, in some one or more other classes, shall not be refused, nor shall the registration thereof be invalidated

(a) on the ground of the design not being a new and original design, by reason only that it was previously registered; or

(b) on the ground of the design having been previously published in the Union, by reason only that it has been applied to goods of any class in which it was so previously registered.

E. sec. 51. **114.** (1) The Commissioner shall grant a certificate of registration to the proprietor of the design when registered.

(2) The Commissioner may, in case of loss of the original certificate, or in any other case in which he deems it expedient, furnish one or more copies of the certificate.

E. sec. 52. **115.** (1) There shall be kept at the Patent Office a book called the Register of Designs, wherein shall be entered the names and addresses of proprietors of registered designs, notifications of assignments, and of transmissions of registered designs, and such other matters as may be prescribed.

(2) After the date specified in any Proclamation issued in terms of section *one hundred and nine* of this Act the register of designs of the Province to which such Proclamation refers shall be deemed to be incorporated with and to form part of the register of designs under this Act.

(3) The register of designs shall be *prima facie* evidence of any matters by this Act directed or authorized to be entered therein.

E. sec. 66. (4) No notice of any trust shall be entered in the register.

E. sec. 67. **116.** The register of designs shall at all convenient times be open to the inspection of the public, subject to the provisions of this Act, and to such regulations as may be prescribed; and certified copies, sealed with the seal of the patent office, of any entry in any such register, shall be given to any person requiring the same, on payment of the prescribed fee.

117. The Commissioner may, on request in writing accompanied by the prescribed fee, --

- (a) Cancel the registration of a design, either wholly or in respect of any particular goods in connection with which the design is registered.
- (b) Correct any clerical error in the representation of a design, or in the name or address of the proprietor of any design, or in any other matter which is entered upon the register of designs.

118. (1) Where a person becomes entitled, by assignment, transmission or other operation of law to the copyright in a registered design, the Commissioner shall on request, and on proof of title to his satisfaction, register him as the proprietor of the design.

(2) Where a person becomes entitled to any interest in a design the Commissioner shall, on request and on proof of title to his satisfaction, cause notice of the interest to be entered in the prescribed manner in the register of designs.

119. (1) The Court may, on the application of any person aggrieved by the non-insertion in, or omission from the register of designs of any entry, or by any entry made without sufficient cause or wrongly remaining in such register, or by an error or defect in any entry in such register, give such order for making, expunging or varying such entry as it may think fit.

(2) The Court may, in any proceedings under this section, decide any question that it may be necessary or expedient to decide in connection with the rectification of the register.

120. (1) A certificate purporting to be under the hand of the Commissioner as to any entry, matter or thing which he is authorized by the Act to make or do, shall be *prima facie* evidence of the entry having been made, and of the contents thereof, and of the matter or thing having been done or left undone.

(2) Printed or written copies or extracts purporting to be certified by the Commissioner and sealed with the seal of the Patent Office or from the register of designs or any book or document relating to designs and kept in the Patent Office shall be admitted in evidence in all Courts and all proceedings without further proof or production of the originals.

121. (1) No person shall make or cause to be made a false entry in the register of designs, or a writing falsely purporting to be a copy of any such entry, or produce or tender, or cause to be produced or tendered as evidence any such entry in writing knowing it to be false.

Penalty: Three Years' Imprisonment.

(2) The provisions of section *one hundred and four* shall apply in respect of any wilfully false statement or representation made in connection with this Chapter as if the said section had been here again set out.

Penalty: One Year's Imprisonment.

PART III.

Copyright in registered Designs.

122. (1) When a design is registered, the registered proprietor of the design shall, subject to the provisions of this Chapter, have copyright in the design during five years from the date of registration.

(2) If within the prescribed time, before the expiration of the said five years, application for the extension of the period of copyright is made to the Commissioner in the prescribed manner the Commissioner shall, on payment of the prescribed fee, extend the period of copyright for a second term of five years from the expiration of the original period.

(3) If within the prescribed time before the expiration of such second term, application for further extension is made to the Commissioner in the prescribed manner, he may, subject to any rules under this Act, and on payment of the prescribed fee, extend the period of copyright for a third term of five years from the expiration of the second term.

E. sec. 71.

123. The person registered as the proprietor of a design shall, subject to the provisions of this Chapter and to any rights appearing from the register to be vested in any other person, have power to assign, grant licences as to, or otherwise deal with, the design.

E. sec. 54.

124. (1) Before the delivery on sale of any articles to which a registered design has been applied, the proprietor shall—

(a) (if exact representations or specimens were not furnished on the application for registration) furnish to the Commissioner the prescribed number of exact representations or specimens of the design; and if he fails to do so, the Commissioner may erase his name from the register, and thereupon the copyright in the design shall cease; and

(b) cause each such article to be marked with the prescribed mark, or with the prescribed mark or figures, denoting that the design is registered; and if he fails to do so, the proprietor shall not be entitled to recover any penalty or damages in respect of any infringement of his copyright in the design, unless he shows that he took all proper steps to ensure the marking of the article, or unless he shows that the infringement took place after the person guilty thereof knew or had received notice of the existence of the copyright in the design.

(2) Where a representation is made to the Governor-General by or on behalf of any trade or industry that in the interests of such trade or industry it is expedient to dispense with or modify, as regards any class or description of articles, any of the requirements of this section as to marking, the Governor-General may, by rule under this Act, dispense with or modify such requirements, as regards any such class or description of articles to such extent and subject to such conditions as he thinks advisable.

E. sec. 55.

125. The disclosure of a design by the proprietor to any other person in such circumstances as would make it contrary to good faith for that other person to use or publish the design, and the disclosure of a design in breach of good faith by any person other than the proprietor, and the acceptance of a first and confidential order for goods bearing a new or original design intended for registration, shall not be deemed to be a publication of the design sufficient to invalidate the copyright thereof, if registration thereof is obtained subsequently to the disclosure or acceptance.

E. sec. 56.

126. (1) During the existence of copyright in a design, or such shorter period (not being less than two years from the registration of the design) as may be prescribed, the design shall not be open to inspection, except by the proprietor, or a person authorized in writing by him, or a person authorized by the Commissioner, or by the Court, and furnishing such information as may entitle the Commissioner to identify the design, and shall not be open to the inspection of any person, except in the presence of the Commissioner, or of an officer acting under him, and a payment of the prescribed fee; and the person making the inspection shall not be entitled to take a copy of the design or any part thereof.

Provided that where registration of a design is refused, on the ground of identity with a design already registered, the applicant for registration shall be entitled to inspect the design so registered.

(2) After the expiration of the copyright in a design, or such shorter period as aforesaid, the design shall be open for inspection, and copies thereof may be taken by any person on payment of the prescribed fee.

(3) Different periods may be prescribed under this section for different classes of goods.

127. On the request of any person furnishing such information as may enable the Commissioner to identify the design, and on payment of the prescribed fee, the Commissioner shall inform such person whether the registration still exists in respect of such design, and if so, in respect of what classes of goods, and shall state the date of registration, and the name and address of the registered proprietor. E. sec. 57.

PART IV.

Legal Proceedings.

128. (1) During the existence of copyright in any design, it shall not be lawful for any person— E. sec. 60.

- (a) For the purposes of sale to apply or cause to be applied to any article, in any class of goods in which the design is registered, the design, or any fraudulent or obvious imitation thereof, except with the licence or written consent of the registered proprietor, or to do anything with a view to enable the design to be so applied; or
- (b) Knowing that the design, or any fraudulent or obvious imitation thereof, has been applied to any article without the consent of the registered proprietor, to publish or expose or cause to be published or exposed for sale that article.

(2) If any person acts in contravention of this section he shall be liable for every contravention to pay to the registered proprietor of the design a sum not exceeding fifty pounds recoverable as a liquidated debt; or if the proprietor elects to bring an action for the recovery of damages for such contravention, and for an interdict against the repetition thereof, he shall be liable to pay such damages as may be awarded, and to be restrained by interdict accordingly.

Provided that the total sum recoverable as a liquidated debt, in respect of any one design shall not exceed one hundred pounds.

129. The provisions of this Act with regard to certificates of the validity of a patent, and to the remedy in case of groundless threats of legal proceedings by a patentee, shall apply in the case of registered designs, in like manner as they apply in the case of patents, with the substitution of references to the copyright in a design for references to a patent, and of references to the proprietor of a design for references to the patentee, and of references to the design for references to the invention. E. sec. 61.

PART V.

General.

130. The provisions of section *twenty-five* of this Act with regard to the position of persons under disability in respect of matters connected with patents shall *mutatis mutandis* apply to the position of such persons in matters connected with designs. E. sec. 83.

131. Where any discretionary power is by this Act given to the Commissioner, he shall not exercise that power adversely to E. sec. 73.

an applicant for the registration of a design without (if so required within the prescribed time by the applicant) giving the applicant an opportunity of being heard.

E. sec. 74. **132.** The terms of section *ninety-nine* shall apply in the case of any administrative difficulty arising under this Chapter.

E. sec. 69 (2). **133.** When an application for a design has been abandoned or refused, the application and any drawings, photographs, tracings, representations or specimens left in connection with the application shall not at any time be open to public inspection, or be published by the Commissioner.

E. sec. 89. **134.** (1) No person shall falsely describe any design applied to any article sold by him as registered.

Penalty: Five Pounds.

(2) If any person sells an article having stamped, engraved or impressed thereon, or otherwise applied thereto, the word "registered," or any other word expressing or implying that the design applied thereto is registered, he shall be deemed for the purposes of this section to represent that the design applied thereto is a registered design.

E. sec. 89. **135.** No person shall, after a copyright in a design has expired, put or cause to be put on any article to which the design has been applied the word "registered" or any word or words implying that there is a subsisting copyright in the design.

Penalty: Five Pounds.

136. The provisions of Chapter II., Part VIII. of this Act with regard to the framing and effect of regulations in respect of patents shall apply *mutatis mutandis* to the framing and effect of regulations relating to designs, etc., as if the said provisions of the said Part had referred to designs as well as to patents.

References:

- C.—Commonwealth Act 20 of 1905.
 E.—5 Ed. VII., c. 15.
 C.'77.—Cape Act 22 of 1877.
 C.'95.—Cape Act 13 of 1895.
 T.—Transvaal Proclamation 23 of 1902.
 N.—Natal Law 4 of 1885.
 N.Z.—New Zealand Act 17 of 1911.
 O.—O.F.S. Ch. 112 (1901).

BILL

Relating to Trade Marks.

BE IT ENACTED by the King's Most Excellent Majesty, the Senate and the House of Assembly of the Union of South Africa as follows:—

PART I.—INTRODUCTORY.

1. This Act may be cited as the Trade Marks Act, 191 .
2. This Act shall commence on a day to be fixed by Proclamation, not being less than months after its passing.
3. This Act is divided as follows:—
 - Part I.—Introductory—Sections 1 to 4.
 - Part II.—Administration—Sections 5 to 15.
 - Part III.—Registrable Trade Marks—Sections 16 to 20.
 - Part IV.—Registration of Trade Marks—Sections 21 to 49.
 - Part V.—Assignment of Trade Marks—Sections 50 to 51.
 - Part VI.—The Registrar of Trade Marks—Sections 52 to 60.
 - Part VII.—Miscellaneous—Sections 61 to 81.
4. (1) In this Act, except where clearly otherwise intended,
 - “Court ” means a Provincial or Local Division of the Supreme Court of South Africa, or a Judge thereof.
 - “Law Officer ” means any Attorney-General or legal adviser of the Union Government appointed by the Minister to exercise the powers and discharge the duties conferred or imposed on a Law Officer under this Act.
 - “Mark ” means a device, brand, heading, label, ticket, name, signature, word, letter, numeral or any combination thereof.
 - “Person ” includes a body corporate and a firm, and any association of individuals, bodies corporate or firms.
 - “Prescribed ” means, in relation to proceedings before the Court, prescribed by rules of Court; and, in other cases, prescribed by this Act or the rules thereunder.
 - “Province ” means any of the territories formerly Colonies and now Provinces of the Union of South Africa.
 - “Provincial Trade Marks Act ” means an Act of any Province relating to the registration of trade marks, and in force at the date of Union, and it includes all regulations thereunder.
 - “Register ” means the Register of Trade Marks under this Act.
 - “Registered Trade Mark ” means a trade mark registered under this Act.
 - “Registrar ” means the Registrar of Trade Marks under this Act.

“ Trade Mark ” means a mark used or proposed to be used upon or in connection with goods for the purpose of indicating that they are the goods of the proprietor of such trade mark by virtue of manufacture, selection, certification, dealing with, or offering for sale.

“ This Act ” includes all regulations made thereunder.

(2) Penalties printed below certain sections indicate that any contravention of the particular section, whether by act or omission, shall be an offence against this Act, punishable upon conviction by a penalty not exceeding the penalty mentioned. Imprisonment shall mean imprisonment with or without hard labour. Where a fine is mentioned with an alternative of imprisonment, the latter means imprisonment in default of payment of the fine.

PART II.—ADMINISTRATION.

5. This Act shall not affect any proceedings under a Provincial Trade Marks Act, nor any right or liability acquired or incurred before the commencement of this Act.

C, sec. 8.

6. (1) The registered proprietor of a Trade Mark duly registered under any Provincial Trade Marks Act, may make application for the registration of his trade mark under this Act.

(2) The application shall, subject to paragraphs (3), (4) and (5) of this section, be dealt with in the same manner as other applications for registration of trade marks.

(3) The trade mark may be registered even if it does not contain the essential particulars required by this Act, but subject, in that case, to such conditions and limitations as to mode or place or period of user as the Registrar or Court (as the case may be) thinks fit to impose.

(4) Where the same trade mark, or a nearly identical trade mark, is owned or registered by another proprietor in any part of the Union in respect of the same goods, the trade mark may be registered, subject to such conditions and limitations as to mode or place of user or otherwise as the Registrar or Court (as the case may be) thinks fit to impose to preserve the rights of each proprietor.

(5) Where the trade mark, or a nearly identical trade mark, is common to the trade in another Province, the registration under this Act shall confer no exclusive rights in that Province on the registered proprietor, and that Province may be excepted from the registration under this Act.

(6) The registration of the trade mark under a Provincial Trade Marks Act shall cease upon its registration under this Act.

C, sec. 9.

7. (1) The unregistered proprietor of a trade mark in use in any Province at the commencement of this Act may make application for the registration of his trade mark under this Act.

(2) The application shall, subject to paragraphs (3), (4), (5) and (6) of this section, be dealt with in the same manner as other applications for registration of trade marks.

(3) The trade mark may be registered, if it could have been lawfully registered under the Provincial Trade Marks Act in force at the commencement of this Act, in the Province in which the trade mark was then used, had an application for its registration been made before the commencement of this Act.

(4) If the trade mark does not contain the essential particulars required by this Act, it may nevertheless be registered, subject to such conditions and limitations as to mode or place or period of user as the Registrar or Court, as the case may be, thinks fit to impose.

(5) Where the same trade mark, or a nearly identical trade mark is owned or registered by another proprietor in any part of the Union in respect of the same goods, the trade mark may be registered subject to such conditions as to mode or place of user or otherwise as the Registrar or Court, as the case may be, thinks fit to impose to preserve the rights of each proprietor.

(6) Where the trade mark, or a nearly identical trade mark, was, at the commencement of this Act, common to the trade in another Province, the registration under this Act shall confer no exclusive rights in that Province on the registered proprietor, and that Province may be excepted from the registration under this Act.

8. The Governor-General may by Proclamation declare that on a date therein specified the administration of the Trade Marks Acts of any Province shall be transferred to the Trade Marks Office established under this Act.

9. On the date so specified the Trade Marks Acts of any C. sec. 6. such Province shall cease to apply to trade marks, further than as follows:—

- (a) The Provincial Act under which a trade mark is registered shall continue to apply to that trade mark so long as the registration under that Act remains in force.
- (b) Proceedings under a Provincial Trade Marks Act, pending at the commencement of this Act, may be continued and completed under the Provincial Trade Marks Act.

10. (1) On the said specified date, the Provincial Trade C. sec. 11. Marks Acts of any such Province as aforesaid shall, so far as is necessary for the purpose of completing then pending proceedings and of giving effect to then existing rights, be administered by the Registrar, who shall collect any fees payable thereunder.

(2). All powers and functions under any Provincial Trade Marks Act vested in the Governor or in any Minister, officer or authority of any such Province as aforesaid shall vest in the Governor-General, Minister, officer or authority exercising similar powers under the Union as the case requires or as is prescribed.

11. The registration of a trade mark under a Provincial C. sec. 7. Trade Marks Act shall cease at the date when, under the said Act, it would (if after the commencement of this Act no fee for the continuance of its registration were paid) become liable to removal from the Register. And no fee shall be receivable nor shall any act be done after the commencement of this Act for the continuance of the registration of a trade mark under a Provincial Act.

12. The Minister to whom the Governor-General shall assign C. sec. 10. that duty shall be charged with the administration of this Act.

13. (1) There shall be a Registrar of Trade Marks who, un- C. sec. 11. less and until the Governor-General otherwise determines, shall be the officer filling the post of Commissioner of Patents.

(2) The Governor-General may appoint one or more Deputy-Registrars of Trade Marks, who shall have all the powers conferred by this Act upon the Registrar, but subject to the control of the latter.

14. For the purposes of this Act an office shall be established C. sec. 12 which shall be called the Trade Marks Office: and there may be a sub-office established in any Province other than the one in which the main office is situated.

15. There shall be a seal of the Trade Marks Office and C. sec. 13. impressions thereof shall be judicially noticed.

PART III.—REGISTRABLE TRADE MARKS.

C. secs. 15, 16. **16.** (1) A registrable trade mark shall consist of essential
C. 95, sec. 2. particulars with or without additional matter.
E. sec. 9.

T. sec. 3. (2) The essential particulars of a registrable trade mark shall
N. sec. 5. be one or more of the following particulars:—
O.F.S., 13 '93.

sec. 1. (a) A name or trading style of a person printed, impressed
N.Z., sec. 64. or woven in some particular and distinctive manner;
or

(b) A written signature or copy of a written signature of
the person applying for registration thereof or some
predecessor in his business; or

(c) An invented word or invented words; or

(d) A word or words having no reference to the character
or quality of the goods, and not being a geographical
name used or likely to be understood in a geographical
sense, or a surname.

(e) Any other distinctive mark;

but a name, signature or word or words other than such as fall
within the description in the above paragraphs (a), (b), (c),
and (d) shall not except by order of the Court be deemed a
distinctive mark.

For the purposes of this section “distinctive” shall mean
adapted to distinguish the goods of the proprietor of the trade
mark from those of other persons..

In determining whether a trade mark is so adapted regard
may be had in regard to a trade mark in actual use to the
extent to which such user has rendered such trade mark in fact
distinctive for the goods with respect to which it is registered
or proposed to be registered.

C. sec. 17. **17.** The additional matter which may be added to the
T. sec. 3. essential particulars of a registrable trade mark shall be:—
C. 95, sec. 2.

O. sec. 1. (a) Any letters, words or figures; or

N. sec. 8 (2). (b) Any combination of letters, words or figures, or any of
them.

C. secs. 18, 19. **18.** Except in the case of a trade mark properly registered
under a Provincial Trade Marks Act, a registrable trade mark
must not contain:—

(a) the words “Trade Mark,” “Registered,” “Registered
Design,” “Copyright,” “Entered at Stationers’
Hall,” “To Counterfeit this is Forgery,” or words
to the like effect; or

(b) a representation of the King, the Queen, or any
member of the Royal Family, or of the Royal Crown.

(2) A registrable trade mark must not contain:—

(a) the word “Royal” or any word, letter or device,
indicating Royal or Government patronage; or

(b) a representation of the Royal Arms, or of the national
flag of the United Kingdom, or of the flag of the
Union, or of the national arms of the United King-
dom, or of the arms or seal of the Union or any
province; or

(c) a representation of any living person without his
written consent.

C. sec. 21. T. **19.** A trade mark may be limited in whole or in part to a
sec. 5. particular colour or colours, and in case of any application for
E. sec. 11. N. the registration of a trade mark the fact that the trade mark is
sec. 8. so limited shall be taken into consideration by any tribunal in
N.Z. sec. 65. determining whether it is distinctive or not. If and so far as
a trade mark is registered without limitation of colour it shall
be deemed to be registered for all colours.

C. sec. 22. **20.** (1) Where any Union or Provincial authority, or any
association or person, undertakes the examination of any goods
in respect of origin, material, mode or conditions of

manufacture, quality, accuracy, or other characteristic, and certifies the result of such examination by a mark used upon or in connection with such goods, the Minister may, if he judges it to be to the public advantage, permit the authority, association or person to register the mark as a trade mark in respect of such goods, whether the authority, association or person is or is not a trader, or is or is not possessed of a goodwill in connection with such examination and certifying.

(2) When registered, the trade mark shall be deemed in all respects to be a registered trade mark, and the authority, association or person to be the registered proprietor thereof, save that the trade mark shall not be transmissible or assignable except with the permission of the Minister.

(3) This section shall as to conditions of manufacture apply to Union and Provincial authorities only.

PART IV.—REGISTRATION OF TRADE MARKS.

21. A trade mark must be registered in respect of particular goods or classes of goods as prescribed.

C. 77, sec. 2.
N. sec. 6.
C. sec. 23. T.
sec. 4. C. sec.
23. N.Z. sec.
63.

22. (1) If a trade mark

C. sec. 21. E.

(a) contains parts not separately registered by the proprietor as trade marks, or

sec. 25. T.
sec. 3.

(b) contains matter common to the trade or otherwise of a non-distinctive character,

C. 95, sec. 2

the Registrar or the Court, as the case may be, in deciding whether the trade mark shall be entered or shall remain upon the register, may in his or its discretion require, as a condition of its being upon the register, that the proprietor shall disclaim any right to the exclusive use of any of those parts, or of that matter, to the exclusive use of which they hold him not to be entitled, or that he shall make such other disclaimer as they think needful for the purpose of defining his rights under the registration.

Provided always that no such disclaimer shall affect any rights of the proprietor of the trade mark except such as depend upon its registration.

(2) The fact that a mark or matter therein is publicly and honestly used by more than three several persons in any one Province as a mark on or in connection with similar goods shall be treated as conclusive evidence that it is common to the trade.

23. Subject to this Act, the Registrar shall not, except by order of the Court, register in respect of goods a trade mark identical with one belonging to a different proprietor which is already on the register in respect of the like goods, or class of goods, or so nearly resembling such a trade mark as to be likely to deceive.

C. 77, sec. 6.
C. sec. 25.
N.Z. 13-14. T.
sec. 9. E. sec.
19.
N. sec. 13.

24. Where the name or a representation of a living person or a person believed by the Registrar to be living appears on a trade mark, the Registrar may require the applicant to furnish him with the consent of that person to the name or representation appearing on the trade mark before he proceeds with the registration of the trade mark.

C. sec. 26.

25. Where each of several persons applies to be registered as the proprietor of the same trade mark or of nearly identical trade marks in respect of the like goods or class of goods, the Registrar may refuse to register the trade mark until the rights of the applicants have been determined by the Court, or have been settled by agreement in a manner approved by him.

C. 77, sec. 5.
T. sec. 8.
C. sec. 26. E.
sec. 20.
O.C. sec. 5. N.
sec. 12.
N.Z. sec. 75.

26. In case of honest concurrent user or of special circumstances the Registrar, or the Court may, in his or its discretion, permit the registration of the same trade mark or of nearly identical trade marks for the like goods or class of goods by more than one proprietor, subject to such conditions

C. sec. 28.
E. sec. 21.

and limitations as to mode or place of user or otherwise as he or it thinks fit to impose.

C. sec. 29.
E. secs. 24-5-
6-7.

27. (1) Where application is made for the registration of a trade mark so nearly resembling a trade mark of the applicant which is already on the register as to be likely to deceive or cause confusion if used by a person other than the applicant, the Registrar may require as a condition of registration that the trade marks shall be entered on the register as associated trade marks.

(2) If the proprietor of a trade mark claims to be entitled to the exclusive use of any part of it separately he may, if the part satisfies all the conditions of a trade mark, register it as a separate trade mark.

(3) When a part of a registered trade mark is registered separately, it and the trade mark of which it forms a part shall be deemed to be associated trade marks, and shall be entered on the register as such, and the user of the whole trade mark shall for the purposes of this Act be deemed to be also a user of the part separately registered as a trade mark.

(4) Associated trade marks shall be assignable or transmissible only as a whole and not separately; but they shall for all other purposes be deemed to have been registered as separate trade marks.

C. sec. 30.
E. sec. 27.

28. Where under the provisions of this Act user of a registered trade mark is required to be proved for any purpose, the Registrar, Law Officer, or the Court, as the case may be, may, if and so far as he or it thinks fit, accept user of an associated registered trade mark, or of the trade mark with additions or alterations not substantially affecting its identity, as an equivalent for the user of the first-mentioned trade mark.

29. (1) When a person claiming to be the proprietor of several trade marks, which while resembling each other in the essential particulars thereof yet differ in respect of:—

- (a) statements of the goods for which they are respectively used or proposed to be used, or
- (b) statements of number, price, quality, or names of places,
- (c) other matter of a non-distinctive character, which does not substantially affect the identity of the trade mark, or
- (d) colour;

seeks to register such trade marks, they may be registered as a series in one registration.

E. sec. 26.
C. sec. 31.

(2) All the trade marks in a series of trade marks so registered shall be deemed to be, and shall be registered as, associated trade marks.

C. sec. 32. E.
sec. 12.
T. sec. 2 (2).
N. sec. 3.

30. (1) Any person, claiming to be the proprietor of a trade mark, may make application to the Registrar for the registration of his trade mark.

(2) The application must be made in the form prescribed, and be accompanied by the prescribed number of representations of the trade mark, and must:—

- (a) specify the goods or class of goods in respect of which the applicant desires the trade mark to be registered;
- (b) state what are the essential particulars of his trade mark, and disclaim any right to the exclusive use of the matter added to the essential particulars of his trade mark; and
- (c) state an address within the Union as an address for service;

Provided that an applicant need not disclaim his own name or address or the foreign equivalents thereof or that of a predecessor in business.

(3) Separate applications must be made for the registration of a trade mark in respect of each class of goods in respect of which the applicant desires it to be registered.

31. (1) Every application must be lodged by being left or sent by post to the Trade Marks Office or a sub-office.

C. sec. 38.
E. sec. 12.

(2) Every application shall be accompanied by a prescribed number of copies sufficient to enable one copy to be retained or filed in each sub-office of the Union.

(3) If an application be lodged at any sub-office, the officer in charge shall give to the applicant or his agent a receipt therefor in the prescribed form. He shall retain in his office one copy of the application, and shall forthwith transmit the original documents to the Trade Marks Office, together with the remaining copies. The Registrar shall thereupon cause one copy of the said documents to be sent to each of the other sub-offices, and filed for reference there.

(4) Subject to this Act, the Registrar may either accept the application, with or without modification, conditions or amendments, or refuse it.

32. (1) In case of any such refusal or conditional acceptance, the Registrar shall, if required by the applicant, state in writing the grounds of his decision, and the materials used by him in arriving at the same, and such decision shall be subject to appeal to the Court.

E. sec. 12.
C. sec. 31.
T. sec. 2 (3).
N.Z. sec. 67.
C. sec. 5.

(2) The Court shall hear the applicant and, if required, the Registrar, and shall make an order determining whether, and subject to what conditions, amendments or modifications, if any, the application is to be accepted.

(3) Appeals under this section shall be heard on the materials so stated by the Registrar to have been used by him in arriving at his decision; and no further grounds of objection to the acceptance of the application shall be taken by the Registrar, other than those stated by him, except by leave of the Court. When any further grounds of objection are taken, the applicant shall be entitled to withdraw his application without payment of costs on giving notice as prescribed.

(4) The Registrar or the Court, as the case may be, may at any time, whether before or after acceptance, correct any error in or in connection with the application, or may permit the applicant to amend his application upon such terms as they may think fit.

33. If the application is accepted with or without conditions or modifications, it shall forthwith be advertised in the prescribed manner.

C. sec. 36.
N.Z. sec. 68.
E. sec. 13.
T. sec. 6.

34. If by reason of default on the part of the applicant, the registration of a trade mark has not been completed within twelve months from the date of the lodging of the application, the Registrar shall give notice of the non-completion to the applicant, and if, at the expiration of fourteen days from that notice, or such further time as the Registrar in special cases permits, the registration is not completed, the application shall be deemed to be abandoned.

C. sec. 67.
T. sec. 2 (5).

35. (1) Any person may within three months after the advertisement of the application or such further time not exceeding three months, as the Registrar (on application made within the first period of three months) allows, lodge at the Trade Marks Office, or any sub-office, a notice of opposition in duplicate to the registration of the trade mark, setting out the grounds on which he relies to support his notice.

C. secs. 38-46
T. sec. 7.
C. sec. 5.
N.Z. sec. 69.
E. sec. 14.

(2) If lodged at a sub-office, the notice shall be in triplicate, and the officer in charge shall retain one copy and forthwith transmit the original and the other copy to the Trade Marks Office.

(3) The Registrar shall send a duplicate of the notice of opposition to the applicant.

(4) Every notice of opposition shall state an address in the Union as an address for service.

36. (1) Within three months after the lodging of notice of opposition or such further time not exceeding three months, as the Registrar (on application made within such first mentioned three months) allows, the applicant may lodge at the Trade Marks Office or any sub-office a counter statement in duplicate setting out the grounds on which he relies to support his application.

(2) If lodged at a sub-office, the counter-statement shall be in triplicate, and the officer in charge shall retain one copy and transmit the original and the other copy to the Trade Marks Office.

(3) The Registrar shall send a duplicate of the counter-statement to the opponent.

(4) If the applicant fails so to lodge a counter-statement he shall be deemed to have abandoned his application, and in that event he shall not be liable for costs; but if he does lodge a counter-statement, and thereafter abandons his application, he shall, unless the Registrar otherwise orders, pay to the opponent such costs as the Registrar allows.

C. sec. 42.
T. sec. 7.
E. sec. 14.

37. (1) The Registrar shall fix a day for the hearing of the application, and shall give notice thereof to the applicant and the opponent.

(2) On the day so fixed, or on any other day to which the hearing is adjourned, the Registrar shall hear the applicant and the opponent and their respective witnesses, if any, and shall decide whether the application is to be refused or whether it is to be granted either with or without any modifications or conditions.

(3) If it be made to appear to the Registrar that the evidence of all or any of the witnesses may be more conveniently taken before the Deputy Registrar in charge of the sub-office where the objection has been lodged, he shall take all steps necessary to cause such evidence to be so taken and to clothe such officer with the necessary authority to take it.

E. sec. 14.
N.Z. sec. 69.

38. (1) The decision of the Registrar shall be subject to appeal to the Appellate Division, in like manner in all respects as if he were a Judge of the Court.

(2) On such appeal the tribunal shall hear the parties and, if required, the Registrar, and shall make an order determining whether and subject to what conditions, if any, registration is to be permitted.

(3) On the hearing of any such appeal any party may, either in the manner prescribed, or by special leave of the tribunal, bring forward further material for its consideration.

(4) In proceedings under this section no further grounds of objection to the registration of a trade mark shall be allowed to be taken other than those stated by the opponent as hereinbefore provided, except by leave of the Appellate Division. Where any further grounds of objection are taken, the applicant shall be entitled to withdraw his application without payment of the costs of the opponent in giving notice as prescribed.

(5) In any appeal under this section the Appellate Division may, after hearing the Registrar, permit the trade mark proposed to be registered to be modified in any manner not substantially affecting the identity of such trade mark; but in such case the trade mark as so modified shall be advertised in the prescribed manner before being registered.

E. sec. 14 (1)
C. sec. 46.
T. 3 '04, sec. 1
N.Z. sec. 69.

39. If a party giving notice of opposition or of appeal neither resides nor carries on business within the Union, the Registrar may order him to give security for costs, and if the order is not duly complied with, may treat the opposition or appeal as abandoned.

40. When an application for registration has been accepted, C. sec. 47.
E. sec. 16. and has not been opposed, and the time for notice of opposition has expired, or has been opposed and has been granted, the Registrar shall register the trade mark as on the date of the lodging of the application, which date shall be deemed to be the date of the registration, and shall issue to the applicant a certificate of the registration of the trade mark in the prescribed form.

41. The registration of a trade mark under this Act shall C. sec. 48.
E. sec. 28. be for a period of fourteen years, but may be renewed from time to time in accordance with the provisions of this Act.

42. (1) Subject to this Act the person for the time being C. sec. 49.
E. sec. 38. entered in the register as proprietor of a trade mark shall have power to assign the trade mark.

(2) No entry of any name shall affect the right of any owner of the same name to use it or its foreign equivalent.

43. (1) The registration of a person as proprietor of a trade C. sec. 50-1.
T. sec. 11.
E. sec. 41-1. mark shall be *prima facie* evidence of his right to the exclusive use of the trade mark upon the goods in respect to which it is registered and the validity of the registration.

(2) The registration of a person as proprietor of a trade mark shall, after the expiration of five years from the date of the registration (in the absence of fraud) be conclusive evidence of the validity of the registration, and subject to this Act of his right to the exclusive use of the trade mark in respect of the goods in regard to which it is registered, unless the trade mark offends against the provisions of section *eighty* of this Act.

(3) But nothing in this Act shall entitle the proprietor of a registered trade mark to interfere with or restrain the user by any person of a similar trade mark upon or in connection with goods, upon or in connection with which such person has, by himself or his predecessors in business, continuously used such trade mark from a date anterior to the user of the first-mentioned trade mark by the proprietor thereof or his predecessors in business, or to object (on such user being proved) to such person being put upon the register for such similar trade mark in respect of such goods under the provisions of section twenty-six of this Act.

44. No person shall be entitled to institute any proceeding C. sec. 52.
T. sec. 10. to prevent or recover damages for the infringement of a trade mark, unless in the case of a registrable trade mark it is registered under this Act or a Provincial Trade Marks Act.

45. The rights acquired by registration of a trade mark C. sec. 53.
E. sec. 43. shall be deemed to be infringed by the use, in respect of the goods in respect of which it is registered, of a mark substantially identical with the trade mark or so nearly resembling it as to be likely to deceive.

In an action for the infringement of a trade mark the Court, in trying the question of infringement, shall admit evidence of the usages of the trade in respect to the get-up of those goods and of any trade marks or get-up legitimately used in respect of them by other persons.

46. No registration under this Act shall interfere with any E. sec. 44.
N.Z. sec. 97. *bona fide* use by a person of his own name or place of business, or that of any of his predecessors in business, or the use by any person of any *bona fide* description of the character or quality of his goods.

47. Nothing in this Act contained shall be deemed to affect E. sec. 45.
N.Z. sec. 98. rights of action against any person for passing off goods as those of another person or the remedies in respect thereof.

48. (1) The Registrar shall, on application made by the E. sec. 29.
C. sec. 54. registered proprietor of a trade mark registered under this Act, in the prescribed manner and within the prescribed period, renew the registration of such trade mark for a period of

fourteen years from the expiration of the original registration, or of the last renewal of registration, as the case may be, which date is in this Part termed "the expiration of the last registration."

E. sec. 30,
C. sec. 55,

(2) At the prescribed time before the expiration of the last registration of a trade mark under this Act, the Registrar shall send notice in the prescribed manner to the registered proprietor or his agent in the Union of the date at which the existing registration will expire and the conditions as to proof of substantial user and as to payment of fees and otherwise upon which a renewal of such registration may be obtained, and if at the expiration of the time prescribed in that behalf those conditions have not been duly complied with, the Registrar may remove such trade mark from the register, subject to such conditions (if any) as to its restoration to the register as may be prescribed.

C. sec. 57,
E. sec. 31,

49. Where a trade mark has been removed from the register for non-payment of the fee for renewal, it shall, nevertheless, for the purpose of any application for registration during one year next after the date of the removal, be deemed to be a trade mark which is already registered, unless it is shown to the satisfaction of the Registrar that there has been no *bonâ fide* trade user of such trade mark during the two years immediately preceding such removal.

PART V.—ASSIGNMENT OF TRADE MARKS.

E. sec. 22,
C. sec. 58,
N.Z. sec. 77,
T. sec. 4.

50. A trade mark when registered may be assigned and transmitted only in connection with the goodwill of the business concerned in the goods or class of goods for which it has been registered, and shall be determinable with that goodwill.

C. sec. 59,
E. sec. 23,
N.Z. sec. 78,

51. (1) In any case where by reason of dissolution of partnership or other cause a person ceases to carry on business, and the goodwill of the person does not pass to one successor but is divided, the Court may (subject to the provisions of this Act as to associated trade marks and series of trade marks), on the application of any of the parties interested, permit an apportionment of the registered trade marks of the person among the persons in fact continuing the business, subject to such conditions and modifications as it thinks necessary in the public interest.

(2) Associated trade marks may be assigned or transmitted only as a whole.

PART VI.—THE REGISTER OF TRADE MARKS.

C. secs. 61-3,
E. secs. 4-5,
T. sec. 12,
N.Z. sec. 61,

52. (1) There shall be kept at the Trade Marks Office a Register of Trade Marks wherein shall be entered particulars of—

- (a) all registered trade marks, with the names and addresses of their proprietors, together with the date of registration and expiry thereof;
- (b) notification of assignments and transmissions, and disclaimers; and
- (c) any other matters relating to registered trade marks which are prescribed.

(2) Where a trade mark has been lawfully assigned or transmitted, a notification of the assignment or transmission, in the form and authenticated in the manner prescribed, may be given to the Registrar, who shall thereupon register the assignment.

(3) No notice of any trust shall be entered in the register, or be received by the Registrar.

T. sec. 14,
C. sec. 64,

53. The register shall be open to the inspection of the public at all convenient times, on payment of the prescribed fee.

54. (1) Certified copies of entries in the register shall be given to any person applying for them on payment of the prescribed fee. C. sec. 65.
T. sec. 15.
E. sec. 7.

(2) Documents purporting to be copies of or extracts from the register, and to be certified by the Registrar, and sealed with the seal of the Trade Marks Office, shall be admitted in evidence in all Courts of Justice throughout the Union without further proof or production of the originals.

55. No person shall wilfully— C. sec. 67.
E. sec. 16.
T. sec. 19.

- (a) Make any false entry in the register; or
- (b) Make any writing falsely purporting to be a copy of an entry in the register; or
- (c) Produce or tender in evidence any writing falsely purporting to be a copy of an entry in the register..

Penalty: Three years' imprisonment.

56. (1) The Registrar may, on request made in the prescribed manner by the registered proprietor of a trade mark, amend or alter the register by— C. sec. 68.
E. sec. 32.
T. sec. 17.

- (a) correcting any error in the name or address of the registered proprietor of the trade mark; or
- (b) altering the name or address of the registered proprietor who has changed his name or address; or
- (c) cancelling the registration of the trade mark; or
- (d) striking out any goods or classes of goods from those in respect of which the trade mark is registered; or
- (e) entering a disclaimer or memorandum relating to the trade mark which does not in any way extend the rights given by the registration of the trade mark.

(2) Where the register has been amended or altered under this section the registrar may—

- (a) cancel the certificate of registration of the trade mark, and issue a new certificate of registration; or
- (b) make such amendments or alterations in the certificate of registration of the trade mark as are rendered necessary by the amendment or alteration of the register.

57. Subject to the provisions of this Act, where a person becomes entitled to a registered trade mark by assignment, transmission, or otherwise, the Registrar shall on request, and on proof of title, cause the name and address of the person to be entered on the register as proprietor of the trade mark. C. sec. 69.

58. The registered proprietor of a trade mark may apply to the Court for leave to add to or alter the trade mark in any manner not substantially affecting its identity, and the Court may refuse or grant the leave on such terms as it thinks fit. If leave be granted, the Registrar shall, on service of the order granting leave, cause the register to be altered in accordance with the order, and shall in the prescribed manner advertise the trade mark as altered. C. sec. 70.
E. sec. 34.
T. sec. 18.

59. (1) Subject to this Act, the Court, on the application of any person aggrieved or of the Registrar, may order the rectification of the register by— C. sec. 71.
T. sec. 16.
E. sec. 35.
C. 77, sec. 5.

- (a) the making of any entry wrongly omitted to be made in the register; or
- (b) the expunging of any entry wrongly made in or remaining on the register; or
- (c) the insertion in the register of any exception or limitation affecting the registration of a trade mark which in the opinion of the Court ought to be inserted; or
- (d) the correction of any error or defect in the register.

(2) The Registrar shall only make application to the Court under this section in cases where he thinks the application necessary or desirable in the public interest.

(3) Notice of every application to the Court pursuant to this section (other than an application by the Registrar) shall be given to the Registrar, who may be heard thereon.

E. sec. 35.

(4) The Court may, in any proceeding under this section, decide any question that it may be necessary or expedient to decide in connection with the rectification of the register.

E. sec. 37.
C. sec. 72.
N.Z. sec. 90.

60. A registered trade mark may, on the application to the Court of any person aggrieved, be taken off the register in respect of any of the goods for which it is registered, on the ground that it was registered by the proprietor or a predecessor in title without any *bona fide* intention to use the same in connection with such goods, and that there has in fact been no *bona fide* user of the same in connection therewith, or on the ground that there has been no *bona fide* user of such trade mark in connection with such goods during the five years immediately preceding the application, unless in either case such non-user is shown to be due to special circumstances in the trade, and not to any intention not to use or to abandon such trade mark in respect of such goods.

PART VII.—MISCELLANEOUS.

C. sec. 94.
N. sec. 20.
T. sec. 25.
C. 77, sec. 7.

61. The Governor-General may make regulations, not inconsistent with this Act, prescribing the fees to be paid under this Act and all matters which by this Act are required or permitted to be prescribed or which are necessary or convenient to be prescribed for giving effect to this Act or for the conduct of any business relating to the Trade Marks Office.

C. sec. 95.

62. In addition to any other powers conferred on it by this Act, the Court may in relation to any appeal or application under this Act—

- (a) refuse to make any order;
- (b) order any issue of fact to be tried in such manner as it directs;
- (c) order any party to deliver to the Court or to the Registrar the certificate of registration of any trade mark; and
- (d) order any party to pay costs to any other party.

C. sec. 96.
T. Ord. 34,
sec. 1.

63. The Registrar may for the purposes of this Act—

- (a) summon witnesses;
- (b) require the production of documents; and
- (c) award costs against any party to any proceeding before him.

And such costs shall be taxed by the taxing officer and paid, and the payment thereof may be enforced in the same manner as if they were costs allowed by the Court.

C. sec. 97

64. (1) No person who has been summoned to appear as a witness before the Registrar shall, without lawful excuse, and after tender of reasonable expenses, fail to appear in obedience to the summons.

Penalty: Fifty pounds.

C. sec. 98.

(2) No person who appears before the Registrar as a witness shall, without lawful excuse, refuse to be sworn or make an affirmation or to produce documents or to answer questions which he is lawfully required to answer.

Penalty: Fifty pounds.

C. sec. 100.

65. In any legal proceeding in which the validity of the registration of a registered trade mark comes into question, the Court may certify that the right to the exclusive use of

the trade mark came in question, and was decided in favour of the registered proprietor of the trade mark, and then in any subsequent action for infringement of the trade mark the plaintiff on obtaining a final order or judgment in his favour shall have his full costs, charges, and expenses as between solicitor and client, unless the Court trying the subsequent action certifies that he ought not to have them.

66. No person shall wilfully make any false statement or representation to deceive the Registrar or any officer in the execution of this Act, or to procure or influence the doing or omission of anything in relation to this Act or any matter thereunder. C. sec. 101.

Penalty: Three years' imprisonment.

67. The Registrar may at any time before registration of a trade mark permit the amendment of the application for the registration of the trade mark and may at any time permit the amendment of any notice of opposition on such terms as to costs or otherwise as he thinks just. C. sec. 102.

68. Where any discretionary power is by this Act given to the Registrar, he shall not exercise that power adversely to the applicant for registration of a trade mark without (if so required within the prescribed time by the applicant) giving him an opportunity of being heard personally or by his agent. N.Z. sec. 111.
C. sec. 103.
T. sec. 22.

69. Where any prescribed fee is payable in respect of any act or document the Registrar may refuse to permit or perform the act or to receive or issue the document as the case requires until the fee payable in respect thereof is paid. C. sec. 101.

70. Where by this Act any time is specified within which any act or thing is to be done, the Registrar may, unless otherwise expressly provided, extend the time either before or after its expiration. C. sec. 105.

71. Any application, notice, or other document, authorised or required under this Act to be left, made, or given at the Trade Marks Office, or any sub-office, or to the Registrar, or to any other person, may be sent by a prepaid letter through the post. C. sec. 106.

72. (1) Any address for service stated in any application or notice of opposition shall for all purposes of the application or notice of opposition be deemed to be the address of the applicant or opponent, as the case requires, and all documents in relation to the application or notice of opposition may be served by leaving them at or sending them to the address for service of the applicant or opponent, as the case requires. C. sec. 107.

(2) Any address for service may be changed by notice in writing to the Registrar.

73. If any person is, by reason of infancy, lunacy or other inability, incapable of making any declaration or doing anything required or permitted by this Act or regulations, then the guardian or curator (if any) of such incapable person, or if there be none, any person appointed by the Court, upon the petition of any person on behalf of the incapable person or of any other person interested in the making of such declaration or doing such thing, may make the declaration or a declaration as nearly corresponding thereto as circumstances permit, and do the thing in the name and on behalf of the incapable person, and all acts done by such substitute shall for the purposes of this Act be as effectual as if done by the person for whom he is substituted. C. sec. 108.
T. sec. 21.
N.Z. sec. 119

74. If a person who is a party to a proceeding under this Act dies pending the proceeding, the Registrar may on request made in the prescribed manner, and on proof to his satisfaction of the transmission of the interest of the deceased person, substitute in the proceeding his successor in interest in his place, or, if he is of opinion that the interest of the deceased person

is sufficiently represented by the surviving parties, permit the proceeding to continue without such substitution.

C. sec. 110. **75.** Subject to the regulations the Registrar may permit any agent to do, on behalf of any other person, any act in connection with the registration of trade marks or any procedure relating thereto.

T. sec. 27. **76.** The Registrar may, in any case of doubt or difficulty arising in the administration of any of the provisions of this Act, apply to the Law Officer for directions in the matter.

C. sec. 111. T. sec. 23. C. 77. sec. 8. **77.** A certificate purporting to be under the hand of the Registrar and the seal of the Trade Marks Office as to any entry, matter or thing which he is authorised by this Act to make or do shall be *prima facie* evidence of the entry having been made and of the contents thereof, and of the matter or thing having been done or left undone.

C. sec. 112. T. sec. 20. N. sec. 21. **78.** (1) No person shall falsely represent that any trade mark, applied to any article sold by him, is registered.

Penalty: Five pounds.

(2) A person shall be deemed, for the purposes of this section, to represent that a trade mark is registered, if he sells the article with the word "registered" or any word or words expressing or implying that a registration has been obtained for the trade mark stamped, engraved, or impressed on, or otherwise applied to, the article.

C. sec. 113. **79.** No person shall without the authority of the King, or of some member of the Royal Family, of the Governor-General, or of a Governor of a Province, or of some Department of the Government of the Union or a Province (proof whereof shall lie upon the person accused), assume or use in connection with any trade, business, calling or profession the Royal Arms, or arms so nearly resembling them as to be likely to deceive, in such a manner as to be likely to lead other persons to believe that he is carrying on his trade, business, calling or profession by or under such authority.

Penalty: Twenty pounds.

C. sec. 114. T. sec. 9. N. sec. 14. C. 77, sec. 6. **80.** No scandalous design, and no mark the use of which would by reason of its being likely to deceive or otherwise be deemed disentitled to protection in a Court of Justice or the use of which would be contrary to law or morality, shall be used or registered as a trade mark or part of a trade mark.

N.Z. sec. 129. **81.** Any reference in a Statute of any Province passed before the 31st May, 1910 (and not being itself a Provincial Trade Marks Act) to any Trade Marks Act of such Province, shall be taken to include a reference to the corresponding provisions, as far as may be, of this Act.

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